# Petition

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No. ....
IN THE

# Supreme Court of the United States

October Term, 1981

THE CITY OF LOS ANGELES,

*Petitioner*

*v.*

ADOLPH LYONS,

*Respondent*

**Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

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## Questions Presented

1. Does a plaintiff lack standing to request a federal court to enjoin a municipal police department from using a particular force technique against him and others where (a) he is not specifically threatened, (b) he has a remedy for damages, and (c) he represents only himself?

2. Does a federal court order constitute a substantial interference in the operation of a municipal police department where it (a) modifies policies concerning use of force and (b) takes control of such department's training and reporting systems relative to a particular force technique?

TABLE OF CONTENTS


| | Page |
|---|---|
| Questions Presented | i |
| Opinions Below | 1 |
| Jurisdiction | 2 |
| Constitutional Provisions and Statute Involved | 2 |
| Statement | 2 |
| 1. Proceedings | 2 |
| 2. Facts | 4 |
| a. The Respondent's Injury | 4 |
| b. Threats of Injury | 5 |
| c. The Control Holds | 5 |
| (1) The Holds in the Context of Overall Use-of-Force Policy | 5 |
| (2) Description of the Holds | 7 |
| (3) History of the Holds | 8 |
| (4) Officer Training | 9 |
| (5) Reporting Practices | 10 |
| (6) Risks of Injury or Death | 11 |
| (7) Alternatives to the Holds | 11 |
| Reasons for Granting the Petition | 13 |
| I. | |
| The Court of Appeals' Decision in Lyons I on Standing Conflicts With Decisions of This Court | 13 |
| A. A "Case or Controversy" Was Not Established | 14 |
| B. There Was an Otherwise Inadequate Basis for Equitable Relief | 17 |
| C. Class Standing Is Not in Issue as the Respondent Represents Only Himself | 18 |

Page

II.

The Court of Appeals' Decision in Lyons II Is Antithetical to Principles of Federalism and Equity Established by This Court ..... 20

Conclusion ..... 24

TABLE OF APPENDICES

Appendix A. Constitutional Provisions and Statute Involved ..... 1a

Appendix B. Lyons v. City of Los Angeles (Lyons I), 615 F.2d 1243 (9th Cir. 1980) ..... 3a

Appendix C. City of Los Angeles v. Lyons (Lyons I), 449 U.S. 934 (1980) (Order Denying Certiorari; Dissenting Opinion) ..... 18a

Appendix D. Adolph Lyons v. City of Los Angeles, etc., et al., C.D. Cal. No. CV 77-0420-RMT (1980) (Preliminary Injunction Order, Findings of Fact and Conclusions of Law) ..... 21a

Appendix E. Lyons v. City of Los Angeles (Lyons II), 656 F.2d 417 (1981) ..... 28a

Appendix F. City of Los Angeles v. Lyons (Lyons II), ... U.S. ..., 102 S.Ct. 14 (1981) (Memorandum Opinion on Application for Stay) ..... 31a

Appendix G. LAPD Training Bulletin on Use of Force, Part I (May, 1978) ..... 36a

Appendix H. LAPD Training Bulletin on Control Holds, Part II (May, 1978) ..... 41a

## TABLE OF AUTHORITIES


| Cases | Page |
|---|---|
| Baker v. Carr, 369 U.S. 186 (1962) | 14 |
| Baxter v. Palmigiano, 425 U.S. 308 (1976) | 18, 19 |
| Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974) | 19 |
| Hughes Tool Co. v. Trans World Airlines, 409 U.S. 365 (1973) | 13 |
| K-2 Ski Company v. Head Ski Co., 467 F.2d 1087 (9th Cir. 1972) | 5 |
| Lyons v. City of Los Angeles (Lyons I), 615 F.2d 1243 (9th Cir. 1980), cert. denied, 449 U.S. 934 (1980) | 1, 3, 13, 15, 16, 18 |
| Lyons v. City of Los Angeles (Lyons II), 656 F.2d 417 (9th Cir. Aug. 17, 1981, modified Aug. 20, 1981) (per curiam) mandate stayed pend. cert., ... U.S. ..., 102 S.Ct. 14 (Sept. 29, 1981) | 2, 13, 20, 21, 23 |
| Mercer v. Theriot, 377 U.S. 152 (1964) | 13 |
| Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978) | 17, 18 |
| O'Connor v. Board of Education, 449 U.S. 1301 (1980) (memorandum opinion on application to vacate stay) | 5 |
| O'Shea v. Littleton, 414 U.S. 486 (1974) | 13, 14, 15, 16, 17 |
| Owen v. City of Independence, 443 U.S. 622 (1980) | 18 |
| Rizzo v. Goode, 423 U.S. 362 (1976) | 13, 15, 16, 20, 23 |

| Constitutional Provision | |
|---|---|
| Article III, §2, cl. 1 | 2, 14 |

Page

Statutes

28 U.S.C. §1254(1) ..... 2
28 U.S.C. §1331 ..... 2
28 U.S.C. §1343 ..... 2
The Civil Rights Act of 1871, 42 U.S.C. §1983 . 2. 18

Rules of Court

Fed.R. Civ.P. 23 ..... 19
Fed.R. Civ.P. 23(c)(1) ..... 19

Miscellaneous

Brilmayer, The Jurisprudence of Article III: Perspectives on the "Case or Controversy" Requirement, 93 HARV. L.REV. 297 (1979) ..... 4
Report on Upper Body Control Holds (Oct. 6, 1981) ..... 11
Restatement (Second) of Torts (1966) ..... 21
11 Wright, C. & A. Miller, Federal Practice and Procedure: Civil (1973) ..... 5

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**Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

The City of Los Angeles petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

## OPINIONS BELOW

This petition concerns two published opinions of the court of appeals issued in this case. The first arose from the granting of partial judgment on the pleadings in the district court: *Lyons v. City of Los Angeles* (Lyons I), 615 F.2d 1243 (9th Cir. 1980), App. B, *infra*, 3a-17a, *cert. denied*, 449 U.S. 934 (1980). The second arose from a preliminary

*This petition concerns the availability of injunctive relief, which the respondent seeks only against the City of Los Angeles. In his claim for damages, four Los Angeles Police Department officers are now named as defendants along with the City: Robert J. Crupi, Harold J. Gaines, Daniel P. Hills, and Scott A. Landsman.

injunction issued by the district court: *Lyons v. City of Los Angeles* (Lyons II), 656 F.2d 417 (9th Cir. August 17, 1981, modified August 20, 1981) (per curiam) App. E, *infra*, 28a-30a, *mandate stayed pndg. cert.*, .... U.S. ....., 102 S.Ct. 14 (September 29, 1981).

## JURISDICTION

The judgment of the court of appeals was entered on August 17, 1981. On September 11, 1981 the court of appeals denied the petition of the City of Los Angeles (the "City") for rehearing and its alternative motion for a stay of mandate. The Circuit Justice of the Ninth Circuit, Mr. Justice Rehnquist, subsequently granted the City's application for a stay of mandate pending timely filing and disposition of this petition. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

## CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

*Constitution of the United States*

Article III, §2, cl.1 — App. A, *infra*, 1a

Amendment 14, §1 — App. 1a

*Statute*

The Civil Rights Act of 1871, 42 U.S.C. §1983 — App. 1a-2a

## STATEMENT

### 1. Proceedings

On February 7, 1977 the respondent commenced an action against the City and four of its police officers in the United States District Court for the Central District of California under the Civil Rights Act of 1871, 42 U.S.C. §1983, invoking the district court's jurisdiction under 28 U.S.C. §§1331, 1343. The primary objective of the action was to enjoin the Los Angeles Police Department ("LAPD") from applying the bar arm and carotid control holds (the "control holds") upon anyone unless the subject "reasonably appears

to be threatening the immediate use of deadly force."[1] Complaint 15:10-12 (CR 1). Compensatory and declaratory relief were also sought. Among the constitutional theories advanced by the respondent was deprivation of due process of law. Complaint 8:7-22 (CR 1).

The City moved the district court for judgment on the pleadings as to the injunctive and declaratory aspects of the case. The motion was granted but the judgment thereon was reversed by the court of appeals in *Lyons I*, 615 F.2d at 1250. App. 17a. This Court denied the City' petition for a writ of certiorari, with three justices (White, Powell, and Rehnquist) dissenting. *Lyons I*, 449 U.S. 934 (1980). App. C, *infra*, 18a-20a.

On remand the respondent applied for a preliminary injunction and filed an amended complaint. On December 23, 1980 the district court issued a preliminary injunction enjoining the LAPD from using the holds "under circumstances which do not threaten death or serious bodily harm." App. 21a. The district court's order further provided that (a) the preliminary injunction would remain in effect

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[1]This case was not brought as a class action, as neither the complaint nor the first amended complaint alleges that the respondent represents anyone but himself. These pleadings do include the allegation that the control holds threaten the respondent and "others similarly situated." See, *e.g.*, first amended complaint 9:18-22 (CR 94). The prayer for injunctive relief is not expressly confined to future treatment of the respondent. See *id.* at 11:21-12:3 (CR 94).

Prior to the issuance of the preliminary injunction, the district court took no action to certify a class or make preliminary determinations relative to class maintenance. Neither the preliminary injunction nor the findings and conclusions issued in connection therewith make any reference to class maintenance. See App. D, *infra*, 21a-27a. But the scope of the preliminary injunction is not expressly limited to the respondent. See App. 21a-22a.

In February, 1981, while the preliminary injunction was on appeal, the respondent moved the district court to certify a class (and to permit him to add class allegations to his complaint) consisting of "all . . . persons threatened with application [of the control holds] . . . when they do not threaten to inflict serious bodily harm." The certification motion was opposed by the City and the district court stayed class proceedings pending appeal of the preliminary injunction.

until the court had approved a new training program and (b) reporting procedures prescribed by the court were to be followed. App. 21a-22a. Findings of fact and conclusions of law were issued in connection with the preliminary injunction. App. 23a-27a.

The City appealed the preliminary injunction to the court of appeals. A brief stay of the preliminary injunction was issued by the district court, and on December 24, 1980 the court of appeals granted the City's application for a stay pending appeal. On August 17, 1981 the court of appeals rendered a *per curiam* opinion (modified August 20, 1981) affirming the preliminary injunction. App. 30a. The City petitioned for rehearing and moved, in the alternative, for a stay of mandate pending disposition of a petition for a writ of certiorari to be filed with this Court. The petition and motion were denied on September 11, 1981.

On September 17, 1981 the City applied to the Circuit Justice for the Ninth Circuit, Mr. Justice Rehnquist, for a stay of the court of appeals' mandate pending filing and disposition of a petition for a writ of certiorari. On that date Mr. Justice Rehnquist issued a temporary stay, which he extended on September 29, 1981 pending disposition by the Court of a timely petition for a writ of certiorari. App. F, *infra*, 31a-35a.

## 2. Facts

### a. The Respondent's Injury

The district court found that the respondent was detained by LAPD officers for a traffic infraction and that during the course of the detention the officers "without provocation or justification, applied a Department-authorized chokehold which resulted in injuries to" the respondent. App. 23a. The respondent claimed that he urinated and defecated on himself, gasped for air, choked, spit up blood, and injured his larynx.

**b. Threats of Injury**

The respondent's verified complaint[2] alleges that the LAPD's use of the control holds threatens injury to himself and "others similarly situated" and that he "justifiably fears that any contact he has with Los Angeles Police officers may result in his being choked and strangled to death without provocation, justification or other legal excuse." Complaint 8:25-9:4 (CR 1). The respondent also presented evidence that he becomes "extremely apprehensive and nervous" when he sees an LAPD police car. See deposition of the respondent, June 9, 1977, 60:23-61:2 (EX 1). The district court's findings of fact make no reference to the existence of a threat of injury either to the respondent or to others. See App. 23a-26a.

**c. The Control Holds**

(1) *The Holds in the Context of Overall Use-of-Force Policy*

The LAPD as a matter of policy requires its officers to use only that force which is "reasonable and necessary" and the "minimal force" required to overcome resistance. To implement this policy, the LAPD has developed an escalation-de-escalation methodology. Officers are directed to escalate or de-escalate the level of force in response

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[2]The first amended complaint was not verified. See CR 94. Unverified pleadings are not competent evidence at preliminary injunction hearings. See *K-2 Ski Company v. Head Ski Co.*, 467 F.2d 1087, 1088 (9th Cir. 1972); see generally 11 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL §2949, at 473 n.13 (1973); *cf. O'Connor v. Board of Education*, 449 U.S. 1301, 1302 (1980) (Mr. Justice Stevens on application to vacate stay). The allegation referred to, however, was left unchanged in the first amended complaint. See 9:18-25 (CR 94).

to suspects' actions.[3] This methodology consists of the following methods of control:[4]

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|---|---|
| lowest level of force | Verbal commands |
| | Firm grip |
| | Pain compliance holds (*i.e.*, wrist locks, twist locks) |
| | Control holds (*i.e.*, modified carotid, carotid, locked carotid, bar arm, and chancery) |
| | Higher self-defense techniques (*i.e.*, baton techniques[5] and karate kicks[6]) |

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[3]This policy is written. See App. G, *infra*, 36a-40a.

[4]The LAPD has recently introduced two new methods of control: the "Taser" and "Chem-Shield." The Taser consists of a dart with wires connected to a battery generating about 50,000 volts. The dart immobilizes the suspect through the effect the electrical current has upon the neurological system. The Taser has been found to be most effective at a distance of about 8-10 feet, has proved effective about 80% of the time, but risks injury to the suspect from falling. Chem-Shield is a pressurized canister of chemical irritant liquid, which generally causes temporary immobilization through eye closure, intense pain, and coughing. It has proved effective about 70% of the time, but can only be utilized at a range of about 8-10 feet.

[5]These techniques employ a straight baton or a Manadnock baton. The straight baton is a wooden object approximately 15 to 18 ounces in weight, 26 inches in length, and 1¼ inches in diameter. The Manadnock is made of synthetic fiber having approximately 2½ times the density of wood, weighs approximately 27 ounces, is 24 inches long, and is 1¼ inches in diameter. It has a short handle protruding at a right angle near one end. The Manadnock has a maximum striking power approximately 3 to 4½ times that of the straight baton.

The straight baton is used with either a striking motion or a jabbing motion. The Manadnock can be used with spinning, chopping, and punching motions, as well as striking or jabbing. Officers are taught to use full force with baton movements, and to strike the resisting suspect's body below the neck.

[6]Karate kicks consist of three maneuvers: front kick, side kick, and rear kick. Officers executing these kicks would normally be wearing shoes or boots. They are instructed to aim their kick below the solar plexus and above the kneecap.

highest level of force — Deadly force (*i.e.*, the service revolver)

(2) *Description of the Holds*

Control holds utilizing neck restraints are derived from the sport of judo and are used by most major police departments in the country.[7] They are used when lower levels of force are not or would not be effective and when the higher self-defense techniques cannot or should not be used. Of the control holds authorized, the LAPD emphasizes the modified carotid and carotid holds. The modified carotid is a takedown technique designed to bring the subject to a sitting position where the carotid hold can generally be more easily applied. The carotid hold is designed to encourage the subject to submit to control, but, if necessary, to render the subject unconscious.

The holds can be applied when an officer is able to take a position behind the subject. The officer places one arm around the subject's neck, holding the wrist of that arm with his or her other hand. The officer's chest is brought flush against the subject's back. Pressure is applied on two sides of the neck by the lower forearm and the bicep muscle. In the carotid hold, the pressure is focused by the lower forearm and bicep muscle upon the carotid arteries located on each side of the neck. The modified carotid applies lower forearm pressure to a point midway between the trachea (at the front of the neck) and one of the carotid arteries. The carotid hold is capable of rendering the subject unconscious by diminishing the flow of oxygenated blood to the brain through constriction of the carotid arteries. When the brain is sufficiently deprived of oxygen, the subject becomes unconscious. Normally, unconsciousness will occur within 8-14

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[7]A survey of 60 law enforcement agencies in August, 1980 indicated that 90% authorized the carotid hold, 53.33% authorized the bar arm, and 56.67% authorized the chancery. EX 50, pp. 19-20.

seconds. App. H, *infra*, 48a. The bar arm hold, which is deemphasized by the LAPD, is applied similarly except that forearm pressure is applied at the front of the neck. Such pressure causes pain. Although the evidence conflicted on this point, the district court found that the bar arm reduces the flow of oxygen to the lungs, App. 23a; it thereby presumably diminishes the oxygenicity of the blood flowing to the brain. Both holds may be "locked" by deriving additional strength from the officer's other arm. These holds are the "locked carotid" and the "locked bar arm" (or "chancery"). They are to be used when unlocked holds cannot control the subject. Officers are instructed to release the hold when the subject "stops resisting or goes limp." App. 47a. Typically, officers gain control without rendering the subject unconscious. In either event, the subject may then be handcuffed and, generally, thus readily controlled.[8]

(3) *History of the Holds*

The original control hold, introduced in 1937, was the bar arm. In 1970 a LAPD committee (which included an orthopedic surgeon), formed to study the hold, determined that the carotid hold was more effective and less likely to result in injury to suspects. As a result of the committee's report, the LAPD limited emphasis of the bar arm to gaining initial control over suspects by using it primarily as a take-down technique. The carotid hold was thereafter emphasized as the method for effecting complete control. In 1972 the LAPD published a training bulletin warning officers that the bar arm had caused injuries and, rarely, death and that certain precautions should be taken when applying it. EX 49, p. 2.

In 1975 another committee studied the control holds. This committee solicited the opinions of experts in medicine, police science, and the martial arts. The committee con-

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[8]The control holds are described in detail in App. 41a-51a.

cluded that the use of the control holds, as taught, should be continued because, while they may cause injury to suspects upon whom they are applied, injuries are rare and the holds are less likely to cause injury than alternative methods.

In 1978, following the death of a suspect who had a bar arm control hold applied upon him, the LAPD developed the modified carotid control hold as an alternative to the bar arm as a takedown technique. The modified carotid is designed to avoid injury to the trachea. Unlike the carotid hold, the modified carotid can be applied while the subject is standing. Since 1978, LAPD policy on use of the bar arm hold provides that it is to be used only if the modified carotid or carotid cannot be applied or is not effective. In 1978 the LAPD issued a new training bulletin on the control holds. See App. 41a-51a. This bulletin warned officers that certain precautions are necessary to ensure that the holds do not cause serious injury. Also in 1978, the Los Angeles City Council, the City's governing body, investigated the control holds. One result of this investigation was that the Board of Police Commissioners, the civilian board which controls the LAPD, conducted a study of the holds. The Board concluded that while there is inherent danger of injury to both suspects and officers in any physical confrontation, the control holds are necessary because there are no suitable alternatives that are less dangerous. EX 60.

(4) *Officer Training*

LAPD officer recruits receive a total of 960 hours of training at the police academy, including approximately 140 hours of training in self-defense techniques. These 140 hours include 12 hours of demonstration of the control holds. Four of the 12 trainers in the LAPD's physical training division and self-defense unit are martial arts experts. Recruits are instructed to apply the control holds using only that amount of force which is reasonable and necessary and are taught not to apply the holds with all their strength. They are informed of the injuries suspects may receive if the control

holds are not properly applied. In addition to demonstration, additional hours at the academy are devoted to practical use of the holds. About 8 hours are devoted to self-defense performance testing before a board composed of 5 members of the physical training staff. Proficiency is required for graduation.

Upon graduation from the academy, an officer is placed on probation for 12 months and works under the direct supervision of an experienced, specially selected training officer. A probationary officer who demonstrates a lack of expertise in self-defense techniques is given remedial instruction. The LAPD also provides its officers with extensive post-academy training, which includes training in use of the control holds.

The evidence recited above concerning training was not disputed by the respondent. The district court found that LAPD officers "are given at most two hours' instruction on the use of each of these control holds" in their academy training. App. 24a.

(5) *Reporting Practices*

The academy receives copies of arrest and crime reports prepared by officers who are involved in physical altercations with suspects. Officers are directed to write "altercation" on such reports and send copies to the academy. This procedure is required whenever an officer uses any level of physical force to subdue a suspect. The purpose of this reporting procedure is to allow for review of the tactics employed by officers in the field to determine if additional training is necessary. These reports have been required for at least 10 years. Whenever a serious injury or death occurs as a consequence of a confrontation with an officer, a special division of the LAPD conducts a detailed investigation.

These facts concerning the LAPD's reporting procedures were not disputed by the respondent. The district court found that the LAPD does "not now have regulations which man-

date a written report of the use of such force [*i.e.*, the control holds] unless death results from the application thereof." App. 24a.

(6) *Risks of Injury or Death*

The City does not deny that it is possible to injure seriously or even kill someone using the control holds; they are not failsafe. The parties presented to the district court the varied opinions of medical and martial arts experts concerning the likelihood of injury or death. While these opinions differed in many respects, there was a consensus that the bar arm holds are more dangerous than the carotid holds. The City presented evidence that the carotid and bar arm holds were used by LAPD officers at least 975 times between February 1, 1979 and July 31, 1980.[9] The respondent presented evidence that during this period 3 persons died following the use of the holds. He also presented evidence that from May 27, 1975 to June 17, 1980, 9 persons died following the use of the holds, only 1 of whom was initially a traffic detainee. Each of the 9 decedents displayed erratic and violent behavior. The coroner's records indicate that 5 of the 9 had alcohol or other mind-altering drugs in their bloodstream and that in 3 other cases drug usage was suspected. The City contested the respondent's contention that the holds caused these deaths. The district court found that there is a "high likelihood that these fatalities were caused by misapplication of the subject holds." App. 25a.

(7) *Alternatives to the Holds*

The availability of the control holds relegates the baton and karate kicks to situations where officers are threatened with serious bodily injury. Without the control holds, of-

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[9]The LAPD recently reported that during the first quarter of 1981 52,162 arrests were made, 212 altercation reports were filed, and the control holds were applied 138 times. *Report on Upper Body Control Holds* 9 (October 6, 1981).

ficers faced with forceful resistance by suspects, whose resistance does not constitute a threat of serious bodily injury or death, will by necessity resort to the baton and karate kick techniques. The City believes that these techniques will result in substantially more frequent and more severe injuries to and more frequent deaths of suspects. Elimination of the control holds may also result in an increase in the frequency and severity of injuries to officers.

The LAPD continuously reviews other use-of-force techniques and devices designed to overcome physical resistance and attack. Such techniques and devices are rejected where it is thought that they will unduly jeopardize the well-being of suspects and officers or cannot be taught in a reasonable period of time. Some are adopted, such as the Taser and Chem-Shield. See note 4, *supra*. These particular devices, however, cannot be used in all circumstances where the control holds can be applied.

## REASONS FOR GRANTING THE PETITION

This Court should issue a writ of certiorari to the court of appeals because that court in two decisions in this case has decided federal questions in a manner that conflicts with applicable decisions of this Court in the context of adjudicating a matter of great societal significance.

### I.

### THE COURT OF APPEALS' DECISION IN *LYONS I* ON STANDING CONFLICTS WITH DECISIONS OF THIS COURT

The respondent lacks the standing necessary to seek injunctive relief on behalf of himself and others because (a) he failed to present a "case or controversy" to the court for adjudication, (b) he otherwise failed to establish an adequate basis for equitable relief, and (c) he represents only himself. In *Lyons I* the court of appeals concluded that the respondent did have standing to bring this action, and the preliminary injunction reviewed in *Lyons II* rests, in part, upon that determination. *Lyons I*, however, directly conflicts with this Court's decisions in *O'Shea v. Littleton*, 414 U.S. 488 (1974) and *Rizzo v. Goode*, 423 U.S. 362 (1976).[10]

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[10]This Court may properly consider the issue involved in *Lyons I* (standing) on this petition. While the court of appeals in *Lyons I* concluded that the respondent had standing to seek injunctive relief, 615 F.2d at 1250 (App. 17a), and while the City's petition for certiorari was denied at that time with three Justices dissenting, 449 U.S. 934 (App. 18a), decisions of the Court clearly indicate that the standing issue may again be considered.

The Court has said that it is "well-settled" that denial of a petition for certiorari "imparts no implication or inference concerning the Court's view of the merits. . . ." *Hughes Tool Co. v. Trans World Airlines*, 409 U.S. 365, 365 n.1 (1973). For this reason the Court has held that it may consider questions raised at an earlier stage in the proceedings upon which a petition for certiorari was denied. *Mercer v. Theriot*, 377 U.S. 152, 153-154 (1964). The prior denial "does not establish the law of the case or amount to *res judicata* on the points raised." *Hughes Tool Co. v. Trans World Airlines, supra*, 409 U.S. at 365 n.1 (prior dismissal of writ of certiorari as having been improvidently granted).

## A. A "Case or Controversy" Was Not Established

Article III, §2, cl. 1 of the Constitution of the United States limits the federal judiciary's jurisdiction to "cases" and "controversies." It is thus regarded as a "threshold requirement" for invoking jurisdiction of the federal courts. *O'Shea v. Littleton, supra*, 414 U.S. at 493. The requirement is satisfied by the existence of some threatened or actual injury. *Id.* at 493. Threats of injury are central to prayers for injunctive relief. Having suffered injury thus does not alone confer the standing requisite to obtaining an injunction. *Id.* at 495-496. A plaintiff must show that he or she is immediately in danger of sustaining some direct injury. *Id.* at 494. Thus, the threat cannot be "abstract," conjectural, or hypothetical; but rather, must be real and immediate. *Id.*

At least four policies are fostered by the standing requirement. Requiring that a plaintiff have a "personal stake in the outcome" assures "that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult questions." *O'Shea v. Littleton, supra*, 414 U.S. at 493-494, *quoting Baker v. Carr*, 369 U.S. 186, 204 (1962). Second, it serves to enhance the extent to which citizens decide things for themselves ("self-determination"). Brilmayer, *The Jurisprudence of Article III: Perspectives on the "Case or Controversy" Requirement*, 93 HARV. L.REV. 297, 310-315 (1979). Third, through such judicial restraint courts avoid unnecessarily tieing the hands of subsequent courts through the doctrine of *stare decisis*. *Id.* at 304-306. Fourth, it serves to protect the due process rights of absent persons whose interests could be affected through the doctrines of *res judicata* (in class actions) and *stare decisis*. *Id.* at 306-310.

In *O'Shea* the Court believed it would be taken into the "area of speculation and conjecture," 414 U.S. at 497, had it permitted certain plaintiffs to challenge an allegedly discriminatory criminal justice system where they would be

subjected to it only if they violated unchallenged laws *and* only if they were charged, held to answer, and tried. *Id.* There were no allegations of either an intention to violate such laws or of an expectation or threat of prosecution. *Id.* at 497-498.

"Even more attenuated" threats of injury were perceived by the Court in *Rizzo v. Goode, supra*, where plaintiffs were not permitted to challenge the adequacy of the disciplinary system of a municipal police department. The Court stated that the real "case or controversy" was between the plaintiffs and a small minority of unnamed, unidentified police officers whose conduct was presumably affected by their perceptions of the disciplinary system. 423 U.S. at 372.

Central to the court of appeals' decision in *Lyons I* is the following passage:

> "To be subject to these stranglehold*s, a citizen need only be stopped* for a minor traffic violation while driving an automobile, as shown by the alleged facts in this case. The use of the stranglehold is accepted police practice, even in non life-threatening situations. It is not farfetched to suggest that especially in a city like Los Angeles, where many motorists drive long distances daily, the *chances of being stopped* by a policeman for an alleged motor vehicle violation are fairly good."

615 F.2d at 1246. App. 9a. (Emphasis added). *Lyons I* was limited to the allegations in the complaint. The court of appeals may well have read the complaint as alleging routine police application of the holds upon *all* persons stopped for traffic violations. While the City submits that such a reading

is erroneous,[11] if it were correct the respondent's standing would turn on proof of such practice. *Lyons I* under this interpretation may thus be regarded as having addressed allegations that are inherently implausible and which, understandably, were never addressed in the hearing on the preliminary injunction.

A correct reading of the complaint, however, allows only for the conclusion that *Lyons I* cannot be reconciled with *O'Shea* and *Rizzo*. If something more than traffic detention is necessary to prompt the LAPD's application of the holds (*e.g.*, substantial physical resistance), then the probability that the respondent or any other traffic detainee will be subjected to the holds becomes as remote as the probabilities pondered in *O'Shea*.

This case moved beyond the pleadings stage of *Lyons I* upon the respondent's application for a preliminary injunction. At that point his standing to obtain the preliminary injunction turned on the evidence of threats of injury before the district court. The respondent did not attempt to prove that the holds are applied upon all traffic detainees. The district court found that the LAPD authorizes the holds "under circumstances where no one is threatened by death or grievous bodily harm" and that the respondent seeks "to restrict the use of such holds only in situations where an individual is threatened by death or serious bodily harm."

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[11]The respondent alleged that the holds were applied upon him "without provocation, legal justification or excuse," complaint 2:20 (CR 1), and that he "offered no resistance or threat." Complaint 7:7-8 (CR 1). He did not allege that such was the policy or practice of the LAPD that he was attacking. Rather, he characterized the policy and practice as authorization of the use of the holds in situations where officers are "threatened by far less than deadly force," complaint 7:3-4 (CR 1), and alleged that they are routinely applied "in innumerable situations where [police officers] are not threatened by the use of any deadly force whatsoever." Complaint 7:17-19 (CR 1). The respondent, therefore, was not alleging that the holds were automatically applied upon traffic detainees; but rather, that they were applied upon persons threatening non-deadly force upon LAPD officers.

App. 24a. Such a finding is consistent with the City's evidence concerning LAPD policy and practice in the use of the holds, but is inconsistent with the notion that the holds are applied automatically upon persons who are not resisting or fighting LAPD officers.

Moreover, the only evidence the City can find in the record even remotely pertaining to any threat to the respondent by the policies and practices in question are (a) his verified allegation that he "fears" that "any contact" with LAPD officers "may result" in application of the holds upon him, complaint 8:25-9:4 (CR 1), and (b) his remark that he becomes "extremely apprehensive and nervous" upon sighting an LAPD police car. See deposition of respondent, June 9, 1977, 60:23-61:2 (EX 1). The district court made no finding of any threat to the respondent. See App. 23a-27a. These meager facts fall considerably short of making out a "case or controversy" to support issuance of a preliminary injunction.

### B. There Was an Otherwise Inadequate Basis for Equitable Relief

Closely allied with article III's "case or controversy" requirement are certain doctrines established by equity jurisprudence that determine the propriety of injunctive relief.[12] Among these "basic requisites" of equitable relief where principles of federalism are at stake are (a) the "likelihood of substantial and immediate irreparable injury" and (b) the "inadequacy of remedies at law." *O'Shea v. Littleton, supra,* 414 U.S. at 502.

For reasons already set forth the respondent has failed to meet the first requirement. Nor can he satisfy the second. Since the Court's decision in *Monell v. New York City Dept. of Social Services,* 436 U.S. 658, 690 (1978), municipalities

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[12]In *O'Shea* the Court stated that "case or controversy" concerns "obviously shade" into those determining whether there is a "sound basis" for equitable relief. 414 U.S. at 499.

have been liable in damages under the Civil Rights Act of 1871, 42 U.S.C. §1983, for injuries caused by unconstitutional policies, customs, and other official conduct. And in *Owen v. City of Independence*, 445 U.S. 622, 638 (1980), the Court ruled that the qualified immunity (reasonable good faith) defense available to most government officials and employees is not available to the municipality. There is no reason now to believe that such a remedy is inadequate.[13]

## C. Class Standing Is Not in Issue as the Respondent Represents Only Himself

The respondent represents only himself. His complaint contains no class allegations and no class has been certified in the case (although there are motions therefor pending before the district court). The district court made no preliminary or conditional class determinations prior to or at the time of issuing the preliminary injunction. The preliminary injunction on its face appears, however, to apply to LAPD conduct generally, as it is not expressly limited to the respondent. While an injunction protecting the respondent would be essentially meaningless and while the City does not claim surprise from the lack of certification (having long treated the case as if it *could* have broad impact), the district court nonetheless had jurisdiction to issue an injunction protecting no one but the respondent.

A putative class representative and his or her attorney do not and cannot represent the interests of others absent class identification and certification. *Baxter v. Palmigiano*, 425

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[13]As observed by Mr. Justice White in his dissenting opinion from the denial of the City's petition for a writ of certiorari in *Lyons I*, 449 U.S. 934, 935 n.1 (App. 19a), the adequacy of the damages remedy also rebuts the alternative view expressed by the court of appeals in *Lyons I*, 615 F.2d at 1248-1249 (App. 12a-15a), that the respondent had a "case or controversy" for injunctive relief with the LAPD just prior to application of the holds upon him and that its present mootness does not detract from its justiciability under a recognized exception for claims that are "capable of repetition, yet evading review." Review is not evaded when damages are clearly available.

U.S. 308, 310 n.1 (1976) (district court treated case as class action but did not identify or certify the class). It necessarily follows that where the action is not brought as a class action, class relief cannot be given. Even where the action is brought as a class action, preliminary injunctive relief for the class should not be granted prior to class certification. The primary evil fostered by such a preliminary inquiry into the merits is that judge-shopping is made available to potential class representatives.

An adverse ruling in an individual action is not a binding adjudication upon absent class members because they are not parties. Realizing that class certification will ultimately lead to a binding determination of the merits for all class members, a putative class representative generally would prefer to postpone class matters until after a preliminary view of the merits is expressed by the court. Denial of a preliminary injunction may thus induce a putative class representative not to seek class certification and to have another class representative file another action hoping that a different judge will express a more positive view of the merits. Conversely, as may have occurred in the instant case, the grant of a preliminary injunction may encourage a putative class representative to pursue class treatment.[14]

Since this case is not a class action, it would be premature for the Court to address whether a putative class would have standing in this matter. But even if it is determined that consideration can be given to the standing of a class comprised of all persons threatened by the holds who do not

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[14]In *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-178 (1974), the Court determined that Fed.R. Civ.P. 23 does not permit a preliminary inquiry into the merits for the purpose of determining whether an action can be maintained as a class action. Rule 23(c)(1) requires the court to determine whether a suit denominated a class action may be so maintained as soon as practicable after its commencement. A pre-certification inquiry into the merits was said impermissibly to allow "a representative plaintiff to secure the benefits of a class action without first satisfying the requirements for it." *Id.* at 177.

threaten serious bodily harm (see note 1, *supra*), each class member suffers from the same malady debilitating the respondent's standing. It is entirely speculative whether any such individual would be subjected to the holds in his or her lifetime and, should it come to pass that the holds would be applied, such individual would have an adequate remedy at law.

## II.

## THE COURT OF APPEALS' DECISION IN *LYONS II* IS ANTITHETICAL TO PRINCIPLES OF FEDERALISM AND EQUITY ESTABLISHED BY THIS COURT

In *Rizzo v. Goode, supra*, 423 U.S. at 378-380, the Court held that principles of federalism and equity jurisprudence permit federal judicial intrusion into the workings of state and local government only in the "most extraordinary circumstances." *Rizzo*, as here, concerned federal judicial interference in the operation of a municipal police department. The preliminary injunction at issue represents a substantial displacement of municipal authority which was not justified on the facts before the district court. In *Lyons II* the court of appeals characterized the preliminary injunction as a "relatively innocuous interference by the judiciary with police practice" and therefore not violative of the principles established in *Rizzo*. 656 F.2d at 418. App. 29a. In reality, however, the "interference" in question is far from "innocuous" and, indeed, is more substantial than that struck down in *Rizzo*..

Should the preliminary injunction take effect, it would present the LAPD with a Hobson's choice between two alternatives antagonistic to *Rizzo*. The LAPD, on the one hand, conceivably could abandon use of the control holds pending trial, although it would, if possible, prefer to retain them.[15] Such compliance would require retraining of LAPD

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[15]The LAPD Chief of Police has said that he will, if required by the preliminary injunction, direct that use of the holds be discontinued. See declaration of Daryl F. Gates, December 23, 1980, 1:9-16, an exhibit to the City's application to the court of appeals for an emergency stay.

officers,[16] a costly impact not normally associated with provisional relief. Should the injunction be lifted (*e.g.*, by the City prevailing at trial), a second phase of retraining would be necessary.

On the other hand, the LAPD could opt to attempt to dissolve the preliminary injunction by presenting the district court with the means of dissolution it mentioned — a training program acceptable to the court. There is, of course, no guaranty that court approval would be forthcoming. Should the preliminary injunction take effect, the LAPD presently intends to make every reasonable effort to present a training program to the district court for approval.

The preliminary injunction contains a latent ambiguity that may have misled the court of appeals in *Lyons II*. The injunction permits the holds only when officers are threatened with "death or serious bodily harm." App. 21a. The expression "serious bodily harm" begs for definition. One possible meaning is a harm which creates a "substantial risk of fatal consequences."[17] RESTATEMENT (SECOND) OF TORTS §63(1)(b), Comment (1966). Yet, perhaps the district court believed the expression embraced situations where officers are faced with less serious threats. The court of appeals may have believed such was the case, not realizing that a more restrictive interpretation of the expression has certain unforeseen and deleterious consequences. If the holds are limited to dealing with serious

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[16]Chief Gates explained that retraining is essential to avoid "confusion on the part of the officer faced with attack" that can lead to "hesitation" potentially causative of death. *Id.* at 1:17-22.

[17]The district court found that the holds as taught and applied "constitute deadly force." App. 25a. This finding cannot be reconciled with the only statistical data on fatalities before the court. During an 18-month period the holds were applied at least 975 times and the respondent alleged that 3 persons died as a result of application of the holds. Assuming *arguendo* that the fatalities were caused by the holds, these data yield a fatality rate of .31%.

threats to an officer's well-being, the following problems arise:

1. *The holds, as a practical matter, will have been prohibited altogether.*

When officers are faced with threats of a serious nature, they generally must respond with levels of force other than the control holds (*e.g.*, baton techniques, the service revolver).

2. *Some officers do not carry batons or other weapons.*

Some police officers work in plainclothes or in the jails where weapons are not carried for their safety and that of prisoners. The district court order does not supply an alternative means of force to be used in these circumstances.

3. *Some persons who do not threaten officers must be controlled and cannot be controlled by lower levels of force.*

Some apprehended suspects and prisoners in custody attempt to flee and may not in such endeavor threaten an officer. The officer has a duty to prevent flight.

4. *The holds may be the only means of force appropriate to the situation.*

The holds are a natural escalation of force from the level just below, the wrist locks and twist locks applied to the arm. When these pain compliance holds are ineffective, an officer may then be able to apply the control holds without releasing the subject. But if the holds are prohibited, other force techniques require release of the subject (*e.g.*, to apply the baton). Releasing the combative subject, however, offers the options of flight and the opportunity to grab an object to use as a weapon against the officer.

If use of the control holds is enjoined, the federal judiciary will have created a significant void in the LAPD's use-of-force policy. The holds would be permitted in circumstances where they generally would not be used (viz., in response to threats of death or serious bodily harm), but would be replaced with higher levels of force (viz., baton techniques

and karate kicks) in situations where the holds should be used. The resultant of all this will be a greater frequency and severity of injuries suffered by suspects and officers. The risk of death is necessarily increased. These consequences are far from "innocuous."

If, however, a training program is approved by the district court, the federal judiciary will have assumed control of an important aspect of training for over 6500 police officers. And whatever option is pursued by the LAPD, the district court's mandate of a reporting system interjects the federal courts in the day-to-day running of a municipal police department. The contempt sanction for violation may well cast the district court in a supervisory role in overseeing allegations of the use of the holds in prohibited circumstances, perhaps by officers reacting instinctively on the basis of earlier training and years of practice. The principles of *Rizzo* do not countenance such a role for the federal judiciary absent the "most extraordinary circumstances."

Force techniques are concerns integral to the functioning of any police department. These concerns affect policies and practices applicable to the day-to-day activities of police officers. The adequacy of citizen complaint procedures, the concern in *Rizzo*, while concededly essential to responsible policing, are not as fundamentally associated with police operations as are use-of-force policies and practices. Thus, the intrusion here exceeds that eschewed in *Rizzo*.

In sum, more is at stake in the preliminary injunction than perceived by the court of appeals in *Lyons II*. That misperception must have distorted its review of the district court's exercise of discretion and hence constituted error as a matter of law. Not only are principles of federalism violated by the decision below, but, more importantly, the well-being of police suspects and police officers is jeopardized.

## CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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December, 1981

# Appendix

## APPENDIX A

### Constitutional Provisions and Statute Involved

Article III, §2, cl. 1:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Amendment 14, §1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Civil Rights Act of 1871, 42 U.S.C. §1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit

in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

## APPENDIX B

### Opinion of the Court of Appeals (Lyons I)

Adolph Lyons, Plaintiff-Appellant, v. City of Los Angeles, Doe Crupi, Doe Hills, Doe Sandoval and Doe Lloyd, Defendants-Appellees. No. 77-2591.

United States Court of Appeals, Ninth Circuit, March 28, 1980.

Counts five, six and seven of civil rights complaint against a city and four police officers were disposed of by partial summary judgment of the United States District Court for the Central District of California, Robert M. Takasugi, J., and plaintiff appealed. The Court of Appeals, Tuttle, Circuit Judge, sitting by designation, held that: (1) a request for declaratory relief concerning constitutionality of a local ordinance assigning to the city attorney the duty to prosecute misdemeanors committed within the city limits was moot, but (2) possibility of motorists being stopped for minor traffic violations and subjected to strangleholds by police was not so remote as to warrant refusal of injunctive relief, in view of fact that plaintiff was not seeking sweeping structural relief but was seeking only to enjoin use of established police practice violative of constitutional freedoms; matter was also justiciable as concerning conduct which was capable of repetition yet evading review.

Reversed and remanded to district court as to counts five and six for proceedings not inconsistent with opinion.

Michael R. Mitchell, Los Angeles, Cal., for plaintiff-appellant.

Daniel U. Smith, Deputy City Atty., Los Angeles, Cal., for defendants-appellees.

Appeal from the United States District Court for the Central District of California.

Before Tuttle,* Trask and Anderson, Circuit Judges.

Tuttle, Circuit Judge:

Appellant Adolph Lyons filed a seven-count civil rights complaint against the City of Los Angeles (City) and four of its police officers, alleging serious police misconduct. The district court granted partial judgment on the pleadings in favor of the City with respect to those counts seeking injunctive and declaratory relief (counts five, six and seven.) Because we find that the district court misperceived the nature of the "case or controversy" and standing requirements in dismissing part of this case, we reverse the court's order as to counts five and six. We affirm the court's order as to count seven.

I.

The appellant alleges that four Los Angeles city police officers stopped his car because one of its taillights had burned out. He further alleges that without any provocation or reason to fear for their safety, the police officers applied strangleholds around his neck until he was rendered unconscious. Appellant asserts that the police department actively encourages the use of these holds even in non-life-threatening situations, and that on several occasions such police strangleholds have resulted in severe permanent injuries or even death.

The appellant alleges numerous constitutional violations by the police under color of state law. He maintains that the strangleholds violated the first amendment (prior restraint on speech), the fourth amendment (unreasonable seizure of the person), the eighth amendment (cruel and unusual punishment), and the fourteenth amendment (due

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*Honorable Elbert P. Tuttle, Senior United States Circuit Judge, United States Court of Appeals for the Fifth Circuit, sitting by designation.

process). The first four counts of the complaint seek money damages, invoking 42 U.S.C. §§1983, 1985, and 1986, and the theory that the City is vicariously liable for the actions of its employees. Counts 5 and 6 seek injunctive and declaratory relief, respectively, to restrain the City from authorizing the use of the stranglehold controls except where the victim reasonably appears to be threatening the immediate use of deadly force.[1]

Count seven requests a declaratory judgment concerning the constitutionality of a local ordinance creating an alleged conflict of interest within the office of the city attorney. Section 20.26 of the Los Angeles City Administrative Code assigns to the city attorney the duty to prosecute misdemeanors committed within the city limits.[2] The city attorney, however, is also the official responsible for defending the city against civil liability for the acts of its employees. The appellant therefore argues that when a suspected misdemeanant is a city employee acting in the course of his employment, the city attorney cannot prosecute without violating his ethical duties of his client. Thus, section 20.26 effectively prevents the prosecution of city employees. Therefore, the argument continues, section 20.26 violates the equal protection clause by providing less protection for victims of misdemeanors committed by city employees, than for victims of misdeameanors committed by others. In count seven appellant alleges that the city attorney has neither

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[1]We note that the appellant in no way asks for a complete prohibition on the use of the stranglehold. He only seeks to restrain its use to situations where it is constitutional. In what circumstances the use of the strangleholds is constitutional is, of course, a judgment for the district court to make. Our opinion deals only with the issue of whether or not Lyons has standing to assert his claims, and whether those claims meet the case or controversy requirements.

[2]The state enabling law authorizes such prosecution if the district attorney consents. Cal.Gov.Code §41803.5.

investigated nor prosecuted the police officers responsible for the assault. He seeks a declaratory judgment that section 20.26 is unconstitutional.

The City moved for partial judgment on the pleadings with respect to counts five, six, and seven, and with respect to those portions of the vicarious liability count (count two) that related to appellant's first and eighth amendment claims. This appeal is from the order granting that motion.[3] Appellant apparently does not contest that part of the order relating to count two of the complaint. Thus, the only claims at issue here are those contained in counts five, six, and seven, against the City.

II.

Count seven of the plaintiff's complaint requests a declaration that section 20.26 of the Los Angeles City Administrative Code, which delegates to the city attorney the authority to prosecute misdemeanors committed within city limits, violates equal protection by effectively barring prosecution of city employees for misdemeanors.

The City argues that Lyons lacked standing to assert that the failure of the city attorney to prosecute his assailants violated his constitutional rights. The City also argues, among other things, that the City is immune from suit regarding the performance of discretionary prosecutorial du-

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[3]Pursuant to 28 U.S.C. §1291, the Courts of Appeals have jurisdiction over appeals from "final decisions" of the federal district courts. Partial disposition of a multiparty or multiclaim action does not constitute a final decision, absent "an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." Fed.R.Civ.P. 54(b). *See also Manhart v. City of Los Angeles*, 553 F.2d 581 (9th Cir. 1978), rev'd on other grounds, 435 U.S. 702, 98 S.Ct. 1370, 55 L.Ed.2d 657 (1978); *Huckeby v. Frozen Food Express*, 555 F.2d 542 (5th Cir. 1977); *Lane v. Graves*, 518 F.2d 965 (8th Cir. 1975). In this case, however, the district court has made the required determination and direction.

ties, and the relief sought constitutes an unwarranted interference with state criminal proceedings.

We need not reach these contentions, however, because we find the appellant's argument moot. The city attorney has now announced an official policy of referring to the district attorney those criminal cases in which the alleged misdemeanant is a city employee, and in which there is a reasonable basis for a civil suit against the city. Therefore, this part of the case is no longer justiciable. *Cf. Hall v. Beals*, 396 U.S. 45, 90 S.Ct. 200, 24 L.Ed.2d 214 (1969).[4] Therefore, we affirm the district court as to count seven, intimating no view as to the merits of the appellant's contentions.

III.

However, we reach a different result as to counts five and six pertaining to the use of the stranglehold controls. Count five of the complaint seeks preliminary and permanent injunctions restraining the City from authorizing use of the stranglehold controls other than in life-threatening situations. Count six seeks a declaration that the use of such controls in non-life-threatening situations violates several provisions of the Constitution.

The district court did not issue findings of fact or conclusions of law on these issues. We therefore assume that its judgment rested essentially upon the rationales set forth in the defendant's motion in support of partial summary judgment on the pleadings and its briefs in this Court.

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[4]Unlike our reasoning in Part III of the opinion, we reject the contention that this case is not moot because "there is a possibility of a recurrence which would be within the terms of a proper device." *See* Bator, Mishkin, Shapiro and Wechsler, Hart & Wechsler's *The Federal Courts and the Federal System*, 110 (1973). We find as to this count, that given the change in policy, there is not a strong possibility of a recurrence of the behavior of which the appellant complains.

The appellee relies chiefly on the reasoning of *O'Shea v. Littleton*, 414 U.S. 488, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974) and *Rizzo v. Goode*, 423 U.S. 362, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976) for the proposition that Lyons has not shown the possibility of "real and immediate future injury." It is true, as the appellee states, that *O'Shea* says that "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects." 414 U.S. at 495-96, 94 S.Ct. at 676. This is an argument that the plaintiff's case or controversy is no longer active, but is moot or not ripe.[5]

It seems the court below concluded, most likely on the basis of *O'Shea* and *Rizzo*, that there was no standing because there was insufficient showing that the police were likely to do this to the plaintiff again. While this factor was discussed in both *Rizzo* and *O'Shea*, reliance on both those cases to support this contention is misplaced. *O'Shea* involved a suit alleging racial discrimination against a local judge and magistrate. To be affected by the alleged practices of these officers the court said that the plaintiffs would have to "proceed to violate an unchallenged law and *if* . . . charged, held to answer, and tried . . . before petitioners . . . [and then] subjected to the discriminatory practices

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[5]*See* 13 Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction, § 3531 at 231-32 (1975): "*O'Shea v. Littleton* blended standing with both ripeness and mootness concerns . . . As will be seen, much of the law of ripeness and mootness can be viewed as simply a convenient way of expressing particular aspects of standing concerns." And at 89 Supp. (1979) (concerning *Rizzo*): "Recourse to Article III justiciability doctrine in this setting has strong connections with established mootness doctrines." *See also Warth v. Seldin*, 422 U.S. 490, 499, n.10, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975): "The standing question thus bears close affinity to questions of ripeness — whether the harm asserted has matured sufficiently to warrant judicial intervention — and of mootness — whether the occasion for judicial intervention persists."

. . . ." 414 U.S. at 497, 94 S.Ct. at 676. In *Rizzo*, a broad-based suit that sought primarily to protect minorities from alleged police abuses, the Court found the plaintiff's claims even more speculative, since they were based "upon what one of a small, unnamed minority of policemen might do to them in the future because of that unknown policeman's perception of departmental disciplinary procedures." 423 U.S. at 372, 96 S.Ct. at 605.

But in this case, the threat of future injury to not only Lyons, but to every citizen in the area is much more immediate. To be subject to these strangleholds, a citizen need only be stopped for a minor traffic violation while driving an automobile, as shown by the alleged facts in this case. The use of these strangleholds is accepted police practice, even in non life-threatening situations. It is not farfetched to suggest that especially in a city like Los Angeles, where many motorists drive long distances daily, the chances of being stopped by a policeman for an alleged motor vehicle violation are fairly good. Certainly the odds of having that sort of encounter are much greater than the odds of having the sort of encounters described in *O'Shea* or in *Rizzo*, and therefore meet the constitutional requirements of "case" or "controversy." *Baker v. Carr*, 369 U.S. 186, 204, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962); *Massachusetts v. Mellon*, 262 U.S. 447, 488, 43 S.Ct. 597, 601, 67 L.Ed. 1078 (1923). For that reason alone, we could hold that Lyons has standing to seek injunctive relief, even given the *O'Shea* and *Rizzo* standards that there be a showing that this plaintiff would be stopped again and subjected to the practice.

But this case is distinguishable from both *O'Shea* and *Rizzo* case on broader and more significant grounds. The plaintiffs in *O'Shea* and *Rizzo* sought massive structural relief. In *O'Shea* the court's opinion characterized the relief sought as an "ongoing federal audit of state criminal pro-

ceedings." 414 U.S. at 500, 94 S.Ct. at 678. Because of the broad charges and the sweeping relief sought in both cases, the plaintiffs were asking the federal courts, in effect, to supervise the conduct of state officials and institutions over a long period of time. It was this role and this perceived intrusion into what were considered state matters which were at the heart of the court's reluctance to find that the "case" or "controversy" requirements had been met. In this sense, the Court's opinion in *O'Shea* and *Rizzo* represented the evolution of the court's concerns about "our federalism" first noted in *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971).[6]

However in this case, the plaintiff seeks no such structural relief. He seeks merely to enjoin the use of an established police practice which he maintains violates a number of his constitutional freedoms and the freedoms of his fellow citizens. Unlike the situations in *O'Shea* and *Rizzo*, he does not seek to supervise the functioning of the police department. In *Rizzo*, the Supreme Court distinguished and implicitly approved a Fourth Circuit case in which an injunction against the police department was granted, *Lankford v. Gelston*, 364 F.2d 197 (4th Cir. 1966), on the grounds that in that case the Baltimore Police were "executing an 'evil practice that has long and notoriously persisted in the Police Department.' " 423 U.S. at 362, 373-74 n.8, 96 S.Ct. at 605 n.8. In *Lankford*, the Fourth Circuit was per-

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[6] *See generally*, Fiss, Dombrowski, 86 Yale LJ 1103 (1977), especially at 1153: "For the new majority committed to the 'Our Federalism' of *Younger* and to limitation of federal intervention in state court proceedings, the administrative injunction sought in *O'Shea v. Littleton* was a monstrosity: . . ." *See also*, Tribe, Constitutional Law 156, (1978), "*O'Shea* and *Rizzo* no doubt reflect a concern on the part of the Supreme Court that some limits be placed on the power of federal district courts to put into effect broad structural injunctions of the sort which have become more commonplace in recent years."

suaded that an injunction should issue even though the complained-of practices had ceased. 364 F.2d at 202-04. The Supreme Court also distinguished *Rizzo* from *Hague v. CIO*, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423 (1939) and *Allee v. Medrano*, 416 U.S. 802, 94 S.Ct. 2191, 40 L.Ed.2d 566 (1974), two cases which permitted suits under 42 U.S.C. § 1983 against law enforcement authorities, on the grounds that the latter two cases involved a "persistent pattern" of police misconduct rather that a statistical pattern which showed a certain type of behavior. The charge in this case involves a sanctioned police practice and policy which is clearly closer to the "pattern" of police behavior in *Hague* and *Allee* than *Rizzo*.[7] And even though the Supreme Court in *Rizzo* analyzed this "practice and pattern" issue in terms of the showing needed to establish liability under § 1983, it relates directly to the Court's discussion of the standing or ripeness issue because both reflect the Court's preoccupation with the problems of granting massive structural relief.[8]

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[7]"The infrequent invocation of the *Hague* remedy is at least partially explained by the fact that deliberately ordered violations of constitutional rights have not been the primary problem. Most frequently, unconstitutional searches, arrests, or other abuses of police authority cannot be traced as in *Hague* to direct instructions from high police officials." Note, The Federal Injunction as a Remedy for Unconstitutional Police Conduct, 78 Yale L.J. 143, 147 (1968). This case fits neatly into the *Hague* set of facts since the stranglehold was sanctioned police practice. Therefore, the issuance of an injunction is particularly appropriate.

[8]*See Warth v. Seldin*, 422 U.S. 490, 520 (1975) (Brennan, J., dissenting) for a similar analysis that a decision on standing was related to a judgment on the merits; *see also* Wright, Miller & Cooper, § 3531 at 89 Supp.

*See also* Note, Rizzo v. Goode: Federal Remedies for Police Misconduct, 62 Va.L.Rev. 1259, 1265 (1976); "The Court's conclusion that the plaintiffs had no case or controversy with Philadelphia police officials reflected the Court's view of the merits: high police officials do not 'cause' citizens 'to be subjected' to patterns of misconduct merely by acquiescing in them."

It is clear that Lyons once had a live and active claim meeting all the Article III requirements even under *O'Shea* and *Rizzo*, if only for a period that lasted but a few seconds. That period could be described as the time between the moment he was stopped and the moment the stranglehold was applied, or even the split second between the moment the officer moved to grab him and the moment the stranglehold was applied. If under *O'Shea* and *Rizzo* Lyons no longer has a claim for injunctive relief, it is because that claim has now become moot and that controversy no longer exists.

But there are notable exceptions to the mootness rule which make Lyons' claim deserving of consideration in court.

There is a long-standing rule of equity that a case does not become moot as to the specific petitioner in a case, even if the complained-of conduct has ceased, "if there is a possibility of a recurrence which would be within the terms of a proper decree." *See* Bator, Mishkin, Shapiro and Wechsler, Hart & Wechsler's The Federal Courts and the Federal System 110 (1973). As stated in *United States v. W.T. Grant Co.*, 345 U.S. 629, 73 S.Ct. 894, 97 L.Ed. 1303 (1953), an antitrust case in which the defendant had voluntarily ceased the allegedly illegal conduct:

> Both sides agree to the abstract proposition that voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, *i.e.*, does not make the case moot. . . . A controversy may remain to be settled in such circumstances . . .. The defendant is free to return to his old ways. This, together with a public interest in having the legality of the practices settled, militates against a mootness conclusion. . . . For to say that the case has become moot means that the defendant is entitled to a

> dismissal as a matter of right . . .. The courts have rightfully refused to grant defendants such a powerful weapon against public law enforcement. [Citations omitted.]

*Id.* at 632, 73 S.Ct. at 897. *Cf. United States v. Trans-Missouri Freight Assn.*, 166 U.S. 290, 17 S.Ct. 540, 41 L.Ed. 1007 (1897); *NLRB v. Raytheon Co.*, 398 U.S. 25, 90 S.Ct. 1547, 26 L.Ed.2d 21 (1970); *Walling v. Helmerich & Payne, Inc.*, 323 U.S. 37, 65 S.Ct. 11, 89 L.Ed. 29 (1944).[9] Under this standard, Lyons' claim is not moot and can be heard since there is a strong possibility of recurrence of this police tactic.[10]

Lyons' claim is also one that is "capable of repetition, yet evading review" and therefore should be heard. *Southern Pacific Terminal Company v. Interstate Commerce Commission*, 219 U.S. 498, 515, 31 S.Ct. 279, 283, 55 L.Ed. 310 (1911). If Lyons is denied standing to pursue his

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[9]As stated in *Walling*, a case under the Fair Labor Standards Act in which an employer argued the case was moot because the complained-of practice had been discontinued:

> We hold that the case is not moot under these circumstances. Despite respondent's voluntary cessation of the challenged conduct, a controversy between the parties over the legality of the split-day plan still remains. Voluntary discontinuance of an alleged illegal activity does not operate to remove a case from the ambit of judicial power. . . . Respondent has consistently urged the validity of the split-day plan and would presumably be free to resume the use of this illegal plan were not some effective restraint made. . . . (Citations omitted).

*Id.* at 43, 65 S.Ct. at 14-15. In this case there is even a stronger possibility of recurrence since the police have not offered to discontinue the practice.

[10]As to the question of whether the possibility of recurrence must affect that individual plaintiff, *see* Wright, Miller & Cooper, § 3533 at 285: "If a plaintiff who once had standing persists in wishing to litigate a question that was once ripe, willingness to litigate may well rest either upon a substantial fear of future effect or upon a strong desire to vindicate the public interest. Either motive should ensure adequate presentation of the issues."

claim, it is doubtful that anyone will be able to challenge the use of the stranglehold because of the circumstances under which they occur. The Supreme Court has invoked this "capable of repetition, yet evading review" doctrine to review claims, even if the future recurring controversy has been shown to have but a small chance of affecting the original plaintiff. Thus, candidates have been allowed to attack eligibility statutes under this doctrine after their case was mooted, even though there was little or no showing that these individuals might run for office again. *Moore v. Ogilvie*, 394 U.S. 814, 815-16, 89 S.Ct. 1493, 1494, 23 L.Ed.2d 1 (1969). In *Roe v. Wade*, 410 U.S. 113, 124-25, 93 S.Ct. 705, 712, 35 L.Ed.2d 147 (1973), there was little showing that the particular women challenging the statute would again become pregnant and desire an abortion. *Cf.*, *SEC v. Sloan*, 436 U.S. 103, 109-10, 98 S.Ct. 1702, 1707, 56 L.Ed.2d 148 (1978). If the plaintiffs in those cases met the Article III requirements because the type of claims they had brought were "capable of repetition, yet evading review," Lyons' claim should be allowed to proceed also.[11]

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[11]Some might read *De Funis v. Odegaard*, 416 U.S. 312, 94 S.Ct. 1704, 40 L.Ed.2d 164 (1974), the equal protection challenge to the University of Washington's "quota" system in admissions as authority for the proposition that the *W.T. Grant* or the "capable of repetition, yet evading review" doctrines do not apply to Lyons' case. In *De Funis*, the Court refused to apply the *Grant* line of decisions because "mootness in the present case depends not at all upon a 'voluntary cessation' of the admissions practices that were the subject of this litigation . . [but upon] the simple fact that De Funis is now in the final quarter . . . of study . . ." *Id.* at 318, 94 S.Ct. at 1707. The Court said the case was not "capable of repetition, yet evading review" because there was "no reason to suppose that a subsequent case attacking those procedures will not come with relative speed to this Court." *Id.* at 319, 94 S.Ct. at 1707.

But this case is clearly distinguishable from *De Funis* as to both doctrines. The Supreme Court was certainly correct that the issues De Funis raised would come before the Court again with relative speed since five years later, it decided *Regents of the University of California v. Bakke*, 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978). In

The Supreme Court treated the plaintiffs in *O'Shea* and *Rizzo* differently, however. What distinguishes *O'Shea* and *Rizzo* from other cases is that both entailed requests for structural injunctions involving federal supervision of state institutions. It is our reading of *O'Shea* and *Rizzo* that the Court applied stricter Article III standards of standing and mootness because of the type of relief the plaintiffs sought. In other words, to trigger a massive federal structural decree involving a state institution, the high Article III standards of *O'Shea* and *Rizzo* must be met because of the Supreme Court's "federalism" concerns. But for a preventive decree like this one, the more lenient Article III standards of standing or mootness in cases like *W.T. Grant* or *Moore* apply.[12]

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contrast, if Lyons is not allowed to raise his claim here because his case is moot, there is certainly no reason to think that anyone else will be able to attack these procedures "with relative speed," since the mootness standards apparently established in the lower court will keep nearly all plaintiffs similarly situated out of court.

As to the relevance of the *Grant* line of cases, the Court in *De Funis* found *Grant* inapposite because the University of Washington had subsequently admitted De Funis and was permitting him "to complete the term for which he is now enrolled." *Id.* at 318, 94 S.Ct. at 1707. The case therefore was moot because by the time the Supreme Court heard the case, De Funis had received the relief he requested when he filed the suit. In contrast, in this case Lyons has not received the relief he sought when he filed suit. Given that distinguishing fact, we hold the *Grant* line of cases applicable and this case not moot since Lyons has a much stronger continuing "adverse legal interest" than De Funis had at the time the Supreme Court considered his case. *See Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41, 57 S.Ct. 461, 463-64, 81 L.Ed. 617 (1937).

[12]In his casebook, *Injunctions* (1972), Professor Fiss identifies three types of injunctions. "A preventive injunction," he writes "tries to stop a discrete event or act. The other two types of injunctions — regulatory and structural — are differentiated from preventive injunctions in that they establish a long, continuing relationship between the parties and the individual. . . . [In the structural decree], [t]he Court attempts to use the injunction as a device for altering or reorganizing some institutional arrangement. . . ." *Id.* at 1.

In *The Civil Rights Injunction* (1978), Fiss further characterizes the structural injunction as: "entailing a relationship of long duration between the judge and the social institution. . . ."

(footnote continued on following page)

This view is bolstered by other factors. Mr. Justice Story described "the unique office of the injunction as preventive justice: the injunction is an instrument designed to prevent a wrong from occurring in the future."[13] Story was speaking, of course, of the traditional preventive injunction; the notion of the structural injunction had not yet appeared in our jurisprudence.[14]

To read *Rizzo* and *O'Shea* in the manner suggested by the appellees, and apparently adopted by the district court is to take notions of federalism applicable peculiarly to structural decrees and use them to negate the injunction's function as an instrument of preventive justice. For if the standing requirements of *Rizzo* and *O'Shea* are invoked in cases such as this one, it is difficult to see how anyone can ever challenge police or similar administrative practices, since usually no one can know definitely if he is going to be subject to police scrutiny in the future. We cannot believe the Supreme Court in *Rizzo* and *O'Shea* meant to make it nearly impossible to challenge unconstitutional police practices. To do so would be to grant defendants the "powerful

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These considerations — the consumption of resources and even more the role transformation — render plausible the possibility of a right without a remedy — that the court will decline to issue a structural injunction even though that is by far the best remedy. . . ." *Id.* at 108-109.

Professor Fiss' comments on the utility of the structural injunction notwithstanding, what is clear in this case is that Lyons sought no structural relief. Therefore, these concerns about the role transformation of the courts, whether legitimate or not, which clearly played a role in the *O'Shea* and *Rizzo* cases are irrelevant here. See note 6.

As to the Supreme Court's attitude towards structural relief, perhaps Francis Bacon summed it up best four centuries ago in his *Of Innovations*: "And he that will not apply New Remedies, must expect New Evils: for Time is the greatest Innovatour . . ." cited in *Note*, Developments in the Law — Injunctions, 78 Harv.L.Rev. 994 (1965).

[13] *See* Fiss, *The Civil Rights Injunction*, 9.

[14] In *The Civil Rights Injunction*, Professor Fiss traces the development of the structural injunction, tying its development to the civil rights era.

weapon against public law enforcement" which the Court rejected in *W.T. Grant* and other cases. That can only encourage a disrespect for both the law and the police who enforce that law. For as Mr. Justice Brandeis once wrote:

> In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.

*Olmstead v. United States*, 277 U.S. 438, 485, 48 S.Ct. 564, 575, 72 L.Ed. 944 (1928) (Brandeis J., dissenting).

The strangleholds challenged here may be illegal or they may not be. But as long as we refuse to allow anyone to attack their constitutionality here, we tell the citizen that there is no guardian of his constitutional rights. That is a principle that has no foundation either in the Constitution or in our beliefs about what a government ought to be. For that reason, we REVERSE and REMAND to the district court as to counts five and six for proceedings not inconsistent with this opinion.

## APPENDIX C

### Order Denying Certiorari; Dissenting Opinion (Lyons I)

No. 79-1995. City of Los Angeles *v.* Lyons. C.A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 615 F. 2d 1243.

Justice White, with whom Justice Powell and Justice Rehnquist join, dissenting.

Respondent in this case seeks injunctive and declaratory relief under 42 U.S.C. § 1983 to restrain an alleged practice of the Los Angeles Police Department. Because I believe that respondent's standing to seek this relief is open to serious question in the light of *O'Shea v. Littleton*, 414 U.S. 488 (1974), and *Rizzo v. Goode*, 423 U.S. 362 (1976), I dissent from the denial of certiorari.

In February 1977, respondent filed a seven-count complaint against the city of Los Angeles and four of its police officers. Respondent alleged that the four officers stopped his car for a minor traffic violation and that, without any provocation or reason to fear for their safety, they applied strangleholds around his neck, rendering him unconscious. He further alleged that the use of strangleholds in such non-life-threatening situations was a policy of the police department. Respondent sought damages, and injunctive and declaratory relief, claiming that the use of strangleholds in non-life-threatening situations violates the First, Fourth, Eighth, and Fourteenth Amendments.

The only issue before this Court is whether in seeking injunctive and declaratory relief respondent has stated a case or controversy within the jurisdiction of the federal courts. The Court of Appeals, reversing the District Court, held that respondent did have standing. The Court of Appeals

distinguished this case from *O'Shea v. Littleton, supra* and *Rizzo v. Goode, supra*, on two grounds: First, there was a greater likelihood in this case that respondent would be subjected at some future date to the alleged illegal conduct; second, respondent did not seek "structural relief" requiring the federal courts to supervise the conduct of state officials, but only an injunction against the use of an established police practice.[1]

*O'Shea* and *Rizzo* made clear that the federal courts are not the forum in which dissatisfied citizens may air their disagreements with government policy. The jurisdiction of the federal courts is limited by the case-or-controversy requirement of Art. III. Unless a party demonstrates a "personal stake in the outcome," *Baker v. Carr*, 369 U.S. 186, 204 (1962), the disagreement may not be settled by the federal courts. For purposes of equitable relief, "[p]ast exposure to illegal conduct does not in itself show a present case or controversy . . . if unaccompanied by any continuing, present adverse effects" and if there is no "real and immediate threat of repeated injury" to the plaintiff. *O'Shea v. Littleton, supra*, at 495-496. Here, the prospect of future injury rests on the likelihood that respondent will again be

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[1]The Court of Appeals also suggests that since respondent would have had standing to challenge the practice in the short period of time between his being stopped by the police and their use of a stranglehold upon him, the standing problem here can be analyzed in terms of mootness doctrine. The court believed that although respondent no longer has a live controversy, he falls within two exceptions to the mootness doctrine. First, a voluntary cessation of challenged conduct does not moot a claim if there is a strong possibility of its recurrence. Second, respondent's claim is one that is "capable of repetition, yet evading review." The first ground, however, merely restates the problem: it is precisely because petitioner does not threaten harm to respondent except in the abstract manner in which everyone in Los Angeles is threatened that respondent's standing is questionable. The second ground is not applicable because the constitutional issue would be addressed in a damage action brought under § 1983.

stopped or arrested and have the allegedly unconstitutional procedures applied to him. In *O'Shea*, we held that this kind of possibility does not satisfy the case-or-controversy requirement.

There is no question that there is a case or controversy with respect to respondent's right to damages for an alleged past violation of his constitutional rights.[2] However, with respect to a threat of future injury, respondent's position cannot be distinguished from that of any other person who may at some future date have a confrontation with the Los Angeles police. This is the kind of injury we have previously characterized as "abstract" and, therefore, insufficient to create the personal stake required by Art. III. *Id.*, at 494.

We could not conclude that respondent has standing to press his claims for equitable relief without re-examining our holdings in *O'Shea* and *Rizzo* on the limits of the case-or-controversy requirement of Art. III. Of course, we cannot give plenary consideration to every misapplication of constitutional requirements, but the decision of the Court of Appeals appears so at odds with our precedents that I dissent from denial of certiorari.

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[2]If this controversy constitutes a § 1983 cause of action, the constitutional issue would be fully litigated in the damages suit.

## APPENDIX D

### Preliminary Injunction Order

United States District Court, Central District of California.

Adolph Lyons, Plaintiff, vs. The City of Los Angeles, etc., et al., Defendants. No. CV 77-0420-RMT.

Filed and entered December 23, 1980.

This matter having come before this court for hearing on December 18, 1980, and the court having considered the pleadings and other documents filed herein and argument of counsel, and the court having filed its Findings of Fact and Conclusions of Law,

IT IS ORDERED that defendants are hereby enjoined from the use of both the carotid artery and bar arm holds under circumstances which do not threaten death or serious bodily harm.

IT IS FURTHER ORDERED that this injunction is effective 4:30 p.m., December 29, 1980 and shall continue in force until this court approves a training program presented to it. Such program shall consist of a detailed written training manual, prepared by qualified individuals, in addition to appropriate, practical training sessions for the members of the Los Angeles Police Department.

IT IS FURTHER ORDERED that defendant City of Los Angeles establish a requirement, forthwith, that all applications of the use of the holds in question, even under the conditions permitted by this Order, to wit, the death or serious bodily harm situation, be reported in writing to said defendant within forty-eight hours after the use of such holds.

IT IS FURTHER ORDERED that defendant City of Los Angeles shall maintain records of such reports in an orderly fashion, and shall allow this court ready access to such records upon twenty-four hours' notice.

Dated: December 23, 1980.

/s/ Robert M. Takasugi
ROBERT M. TAKASUGI
United States District Judge

**Findings of Fact and Conclusions of Law**

United States District Court, Central District of California.

Adolph Lyons, Plaintiff, vs. The City of Los Angeles, etc., et al., Defendants. No. CV 77-0420-RMT.

Filed December 23, 1980.

Plaintiff's Application for Preliminary Injunction having come on for hearing on December 18, 1980 before this court, and after due consideration of the evidence and argument of counsel, the court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I

On or about October 6, 1976, plaintiff Adolph Lyons, a black male, was detained by officers of the Los Angeles Police Department ("Department") for a traffic infraction.

II

During the course of this confrontation, said officers, without provocation or legal justification, applied a Department-authorized chokehold which resulted in injuries to plaintiff. Plaintiff initiated this action under 42 U.S.C. § 1983, claiming the violation of his civil and constitutional rights.

III

The chokeholds involve the bar arm (trachea) hold and the carotid artery hold — both of which are applied as methods of controlling the subject. The effect of the bar arm hold is to suppress the trachea thereby constricting the flow of oxygen to the lungs. The carotid artery hold is designed to impede the flow of blood to the brain by applying physical force upon the carotid artery.

IV

The officers of the Department are given at most two hours' instruction on the use of each of these control holds during their training at the Department's police academy. The present training program is totally inadequate when weighed against the potential danger resulting from the employment of the holds in question as hereinafter described.

V

The City of Los Angeles and the Department authorize the use of these holds under circumstances where no one is threatened by death or grievous bodily harm. Plaintiff seeks relief from this court to restrict the use of such holds only in situations where an individual is threatened by death or serious bodily harm.

VI

The City of Los Angeles and the Department do not now have regulations which mandate a written report of the use of such force unless death results from the application thereof.

VII

The use of the bar arm and the carotid artery holds engender a high risk of irreparable injury or death as presently used and under the present training methods offered by the Department.

VIII

There is a substantially greater likelihood that the implementation of these holds on persons with pre-existing respiratory or circulatory ailments or on persons under the influence of mind-altering drugs or medication will result in irreparable conditions far beyond the contemplation of permissible police conduct.

IX

In the instance where the subject holds are instituted, there may be a natural tendency of such victim to physically react by instinct or reflex. This almost inevitable reaction may be interpreted by the officer as one suggesting resistance or aggression, thereby prompting the officer either to increase the force or duration of its application or resort to both such counter measures.

X

In the case of the bar arm hold, a slight increase of the force may be sufficient to crush the victim's trachea, thereby leading to fatal consequences within a matter of seconds or minutes. In relation to the carotid artery hold, a slight increase in the duration of the force could result in cardiac arrest which could then lead to similar fatal consequences.

XI

In the past five (5) years, following the employment of the subject holds by officers of the Department, at least nine (9) persons met such fatalities. There is a high likelihood that these fatalities were caused by misapplication of the subject holds.

XII

Given the high risk of injury or death from the misapplication of the control holds, and the inadequate training and instructions presently provided, the carotid artery and the bar arm holds constitute deadly force. Their continued use in situations where death or serious bodily harm is not threatened is unconscionable in a civilized society.

Any finding of fact which may be deemed a conclusion of law is incorporated into the Conclusions of Law section

below, and any conclusion of law which may be deemed a finding of fact is incorporated into the Findings of Fact section above.

## CONCLUSIONS OF LAW

### I

Jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1343.

### II

In order to issue a preliminary injunction, three factors must be successfully met:

1. [H]ave the movants established a strong likelihood of success on the merits;

2. Does the balance of irreparable harm favor the movants; and

3. Does the public interest favor granting the injunction? *Sierra Club v. Hathaway*, 579 F.2d 1162, 1167 (9th Cir. 1978).

### III

The movants have established a strong likelihood of success on the merits.

### IV

The balance of irreparable harm tips decidedly in favor of the movant.

### V

The public interest is clearly in favor of granting a preliminary injunction.

### VI

Unless this court grants this preliminary injunction, there exists no adequate remedy at law.

VII

The continued use of the bar arm and carotid artery holds as presently taught by the Los Angeles Police Department, upon persons who do not threaten serious bodily harm or deadly force, constitutes a violation of the Fourteenth Amendment due process clause, substantive due process, and shocks the conscience of the court.

Dated: December 23, 1980.

/s/ Robert M. Takasugi
ROBERT M. TAKASUGI
United States District Judge

## APPENDIX E

### Opinion of the Court of Appeals (Lyons II)

Adolph Lyons, Plaintiff-Appellee, v. City of Los Angeles, Doe Crupi, Doe Hills, Doe Sandoval and Doe Lloyd, Defendants-Appellants. Nos. 80-6078, 81-5023.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted July 7, 1981. Decided Aug. 17, 1981. As Amended Aug. 20, 1981. Rehearing Denied Sept. 11, 1981.

Plaintiff brought civil rights action against city, seeking damages, injunctive relief, and declaratory relief. After appeal to the Court of Appeal, 615 F.2d 1243, restored two counts of the complaint that had been dismissed by partial summary judgment, the United States District Court for the Central District of California, Robert M. Takasugi, J., entered preliminary injunction forbidding police officers to use carotid artery or bar arm holds under circumstances that do not threaten death or great bodily harm to the officer, and both sides appealed. The Court of Appeal held that trial court did not abuse its discretion in granting preliminary injunction.

Order affirmed and appeal dismissed. Cross-appeal dismissed.

Lewis N. Unger, Los Angeles, Cal., for defendants-appellants.

Michael R. Mitchell, Woodland, Cal., for plaintiff-appellee.

Appeal from the United States District Court for the Central District of California.

Before Goodwin, Hug and Farris, Circuit Judges.

Per Curiam.

Adolph Lyons in 1977 commenced a civil rights action under 42 U.S.C. § 1983 against the City of Los Angeles, seeking damages, injunctive relief and declaratory relief. After an appeal to this court[1] had restored two counts of the complaint that had been dismissed by a partial summary judgment, Lyons obtained a preliminary injunction which forbids police officers to use carotid artery or bar arm stranglehelds under circumstances that do not threaten death or great bodily harm to the officer. Both sides appeal.

This court will not disturb an order granting a preliminary injunction unless it was an abuse of discretion by the district court. *Miss Universe, Inc. v. Flesher*, 605 F.2d 1130, 1133-34 (9th Cir.1979); *Los Angeles Memorial Coliseum Com'n v. Nat. Football*, 634 F.2d 1197, 1200-01 (9th Cir.1980). All the trial judge has done, so far, is to tell the city that its police officers may not apply life threatening stranglehelds to persons stopped in routine police work unless the application of such force is necessary to prevent serious bodily harm to an officer. This relatively innocuous interference by the judiciary with police practice can hardly be characterized as an abuse of discretion when the record reveals that nine suspects who have been stopped by the police and who have been subdued by the use of carotid and bar arm control holds have subsequently died, allegedly of the injuries sustained in the application of these holds. *Cf. Rizzo v. Goode*, 423 U.S. 362, 379, 96 S.Ct. 598, 608, 46 L.Ed.2d 561 (1976) (federal court may not order sweeping structural relief requiring federal court supervision of state police procedures absent "extraordinary circumstances").

Fourth and Fourteenth Amendment issues were briefed and argued by Lyons on cross-appeal in an understandable

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[1] *Lyons v. City of Los Angeles*, 615 F.2d 1243 (9th Cir.), *cert. denied*, ____ U.S. ____, 101 S.Ct. 333, 66 L.Ed.2d 158 (1980).

search for an advisory opinion pending the resumption of what promises to be protracted litigation. Because none of the questions on the cross-appeal arises from an appealable order or judgment over which we have jurisdiction, 28 U.S.C. § 1291, we express no opinion on them.

The order granting the preliminary injunction is affirmed and the appeal is dismissed with costs to the plaintiff.

The cross-appeal is dismissed.

## APPENDIX F

### Memorandum Opinion on Application for Stay (Lyons II)

Supreme Court of the United States, No. A-230.

City of Los Angeles et al., Applicants, v. Adolph Lyons. [September 29, 1981].

Justice Rehnquist, Circuit Justice.

The Court of Appeals, in its most recent opinion in this case, rested its holding on the proposition that "[t]his court will not disturb an order granting a preliminary injunction unless it was an abuse of discretion by the District Court." App., Ex. 5. This proposition, of course, is not only in accord with its own precedents cited in the opinion, but with our own cases on the subject. See, *e.g.*, *Brown v. Chote*, 411 U. S. 452, 457 (1973). If that were all the case involved, there would be so little likelihood that four Members of this Court would grant certiorari that no further discussion would be necessary and the applicant's request for a stay would be denied.

But, as I understand the matter, there is a good deal more to this case than the most recent opinion of the Court of Appeals issued August 17, 1981. The preliminary injunction referred to in that opinion was issued by the District Court only after its earlier partial summary judgment in favor of the applicants had been reversed by the Court of Appeals in *Lyons v. City of Los Angeles*, 615 F. 2d 1243 (CA9), cert. denied, 449 U.S. 934 (1980) (*Lyons I*).

In its opinion in *Lyons I*, the Court of Appeals held that respondent had standing to challenge the use by members of the City of Los Angeles Police Department of so-called "choke-holds" in situations that are not life threatening. *Id.*, at 1246-1249. Because respondent had once been the subject of such a "choke-hold," the Court of Appeals held that respondent had standing to seek an injunction, even

though there was no indication that he would ever be subjected to them again by reason of an arrest by Los Angeles police officers. "[T]he threat of future injury to not only Lyons, but to every citizen in the area is much more immediate than those described in *Rizzo v. Goode*, 423 U.S. 362 (1976), or *O'Shea v. Littleton*, 414 U.S. 488 (1974)." *Id.*, at 1246.

The Court of Appeals in *Lyons I* also held that respondent's request for injunctive relief was not moot. "Lyons once had a live and active claim meeting all the Article III requirements . . . if only for a period that lasted but a few seconds. That period could be described as the time between the moment he was stopped and the moment the strangle hold was applied, or even the split-second between the moment the officer moved to grab him and the moment the strangle hold was applied." *Id.*, at 1248. The Court of Appeals also explained that Lyons' claim is one that is "capable of repetition, yet evading review," even though a "future recurring controversy [will] have but a small chance of affecting the original plaintiff."

On remand the United States District Court entered the following temporary injunction:

> "It is ordered that defendants are hereby enjoined from the use of both the carotid artery and bar arm holds under circumstances which do not threaten death or serious bodily harm.
>
> "It is further ordered that this injunction is effective . . . and shall continue in force until this Court approves a training program presented to it. Such program shall consist of a detailed written training manual, prepared by qualified individuals, in addition to appropriate, practical training sessions for the members of the Los Angeles Police Department.

"It is further ordered that defendant City of Los Angeles establish a requirement, forthwith, that all applications of the use of the holds in question, *even under the conditions permitted by this order*, to wit, the death or serious bodily harm situation, be reported in writing to said defendant within 48 hours after the use of such holds.

"It is further ordered that defendant City of Los Angeles shall maintain records of such reports in an orderly fashion, and shall allow this court ready access to such records upon 24 hours notice." App., Ex. 4 (emphasis added).

It was this latter "preliminary injunction" that the Court of Appeals affirmed in its most recent *per curiam* opinion issued August 17, 1981. Respondent, in opposing this stay of that judgment of the Court of Appeals, states that "[t]he question of Lyons' standing to sue was settled in *Lyons I*." Response, at 2. This is undoubtedly quite true insofar as the Court of Appeals for the Ninth Circuit is concerned, but *Lyons I* is not "law of the case" so far as this Court is concerned. The city petitioned for certiorari to review *Lyons I*, but its petition was at that time denied with Justice White, Justice Powell, and I dissenting. *City of Los Angeles v. Lyons*, 449 U.S. 934 (1980).

I am of the opinion that since the District Court has now formulated the specific terms of an injunction, and held the use of the so-called "choke-holds" unconstitutional except in life-threatening situations, there is a substantial likelihood that an additional member of this Court would now join Justice White's dissent from denial of certiorari in *Lyons I*, thereby resulting in a grant if the city, as it proposes to do, files a timely petition for certiorari by December 9, 1981. The issue to be reviewed, of course, is not whether a preliminary injunction should be affirmed on appeal unless it represents an abuse of discretion, but whether respondent

has standing to maintain this action. On this issue, I think there is enough difference in the approach of the Court of Appeals in this case and the approach of this Court in *O'Shea v. Littleton*, 414 U.S. 488 (1974), and *Rizzo v. Goode*, 423 U.S. 362 (1976), to offer applicants a reasonable chance of success on the merits should the Court grant certiorari. I likewise think that the Court of Appeals' "capable of repetition but evading review" discussion with respect to mootness is not entirely consistent with this Court's opinion in *Weinstein v. Bradford*, 423 U.S. 147, 150 (1975).

Applicants assert that "the effect of the District Court's order will be to cause more injuries to and deaths of suspects," because "police officers will be unequipped to deal with the day-to-day handling of violent arrestees who do *not* threaten death or serious bodily harm." Application, at 12-13. Respondent argues to the contrary, since he claims that the applicant City of Los Angeles may obtain relief from the preliminary injunction merely by properly reforming its training practices "to assure that its police officers understand how dangerous strangulation is and when its officers should strangle." Response, at 18. I find it both unnecessary and probably impossible to decide which of these forecasts, if either, will prove true.

Respondent urges that I should not act on this stay, because the applicants' request for a stay is nothing more than a petition for rehearing of the earlier denial of certiorari by this Court and therefore our Rule 51 prevents me from granting a stay. I am not persuaded by this argument. In *Lyons I*, the Court of Appeals stated that:

> "We note that the appellant in no way asks for a complete prohibition on the use of the strangle hold. He only seeks to restrain its use to situations where it is constitutional. In what circumstances the use of the strangle hold is constitutional is, of course, a judgment

for the District Court to make." *Lyons v. City of Los Angeles, supra,* at 1244, n. 1.

The District Court has now made that judgment, and entered an injunction forbidding its use except under certain circumstances. The order requires recordkeeping and that such records be made available to the District Court upon its request. The case has thus progressed considerably further toward final resolution than it had at the time certiorari was denied in *Lyons I.*

The complaint alleging the use of these police tactics was filed on February 7, 1977, and the City's petition for certiorari is due by December 9, 1981. Thus, what is basically involved in a consideration of traditional "stay equities" is whether the City shall be allowed to use a particular procedure, already in use for at least four years, for the few additional months before this Court acts on its petition for certiorari. I conclude that there is sufficient doubt about the correctness of the basic holding of the Court of Appeals with respect to standing on the part of respondent, together with sufficient equities in favor of the City, to warrant a stay of the Court of Appeals' order affirming the District Court's granting of an injunction, pending a timely filing of a petition for certiorari by the applicants and the disposition thereof by this Court.

*It is so ordered.*

## APPENDIX G

## Training Bulletin

## Use of Force

Part I

(May, 1978)

Freedom cannot exist with an unrestrained police force. Yet, in our society today, force occasionally must be used to maintain order, enforce the law and protect life and property. Therefore, limits must be placed on the use of force to establish a delicate balance. This series of Training Bulletins will enumerate the limits for the use of force as established for the Los Angeles Police Department.

Part I of these bulletins will discuss the theory of escalation and de-escalation and the use of force. The use of deadly force will be discussed in Part II where attention will be directed to the established guidelines of the Department's revised shooting policy.

Force

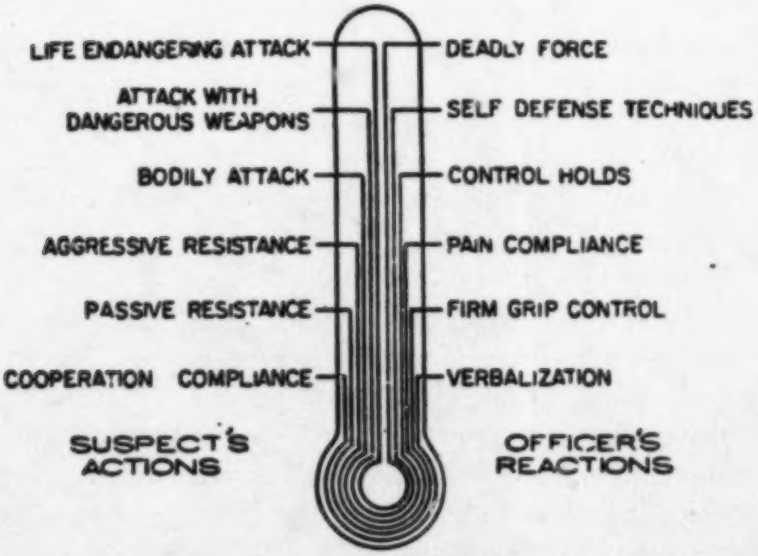
For police application, force is the power used to maintain compliance with the law. This force has more than a physical nature. Generally, verbalization or the mere presence of an officer may be adequate to control a situation. Physical force is sometimes required to gain compliance with the law, but only when other means of gaining compliance have failed.

The Penal Code allows officers to use reasonable force in four situations. First, officers may use the amount of force necessary to effect an arrest. Second, an officer may use reasonable force to prevent the escape of a suspected offender. Third, an officer may use reasonable force to overcome resistance. Last, force may be utilized to maintain order. Each situation explicitly requires the use of force to be reasonable.

Escalation and De-escalation

While control of a suspect through advice, warning, or persuasion is preferable, the use of physical force to control a suspect is sometimes necessary. When physical force is applied, an officer must escalate or de-escalate the amount of force as the suspect's use of force changes.

Before defining escalation and de-escalation, three key points about force must be understood. First, an officer uses force for one basic reason—to control a suspect. Second, when force is used, the officer must *react* to the suspect's actions. Third, an officer may only use the minimum force necessary to control the suspect. Once these three basic principles of physical force are understood, the concept of escalation and de-escalation can be put into proper perspective.



Utilizing the chart, which is a general guideline, the concept of escalation and de-escalation is simplified. Beginning at the bottom, an officer who is dealing with a cooperative suspect, controls the situation merely by talking to the suspect. The verbalization may be either advising, warning, or persuading. Verbalization, "talking a suspect to jail," is the commonly used force to effect the arrest of a suspect. Actual field experience demonstrates that certain techniques of verbalization, coupled with a mature, professional attitude can prevent further escalation of this situation. These techniques include: explaining any actions taken; allowing a suspect to save face in front of his peers; recognizing that a suspect's remarks are not a personal attack against the officer; and allowing a suspect to maintain his dignity if possible.

Assume the same suspect now begins passive resistance in the form of verbal harassment or a refusal to cooperate. Once it is determined that words are ineffective, the officer moves to the next step in order to maintain control of the suspect. Here the officer physically coaxes the suspect with a firm grip of the arm, progressing, if necessary, to "pain compliance" holds such as wrist locks or twist locks. The officer does this knowing that with certain suspects mere touching may cause escalation of the incident.

In the previous situations, the officer escalated the use of force to meet the suspect's increased resistance, but still used only the minimum amount of force necessary to control the suspect. Additionally, the officer only *reacted* to the actions of the suspect. The officer's eventual use of a "pain compliance" hold was warranted because control could not be maintained by lesser means.

*If the same suspect were to break away and attack the officer with fists, then the officer is the victim of bodily attack and must not only try to maintain control of the*

*suspect, but also act in self-defense. Self-defense may include using a control hold until control of the suspect is regained or may include using the baton, kicks, or body throws.*

*Assume that a suspect picks up a dangerous weapon, for example a club, and attacks the officer. The officer then may be able to meet this attack by using self-defense techniques. As the situation becomes life-threatening and all other self-defense techniques are ineffective, the officer may be compelled to escalate to the ultimate step—the use of deadly force.*

By following this altercation step-by-step, it is apparent that the officer was required to alter the use of force to meet the suspect's increased force. De-escalation follows the same pattern. As the suspect's use of force declines, the officer's reaction also will decline. The diagram illustrates the steps for de-escalation.

Consider a situation where the suspect is attacking an officer with a knife and the officer meets this attack by using the baton. In the face of this prospect, the suspect suddenly drops the knife and submits to arrest. Although an officer must proceed with extreme caution, that officer should de-escalate all the way back to verbalization. In other words, the suspect is now cooperating and the officer reacts accordingly, through advising, warning, and persuading.

One critical point must be made: while the ideal situation would begin or end with verbalization, unfortunately, that is not always the case. Consider an officer who is suddenly confronted by an armed suspect without warning. In this situation an officer may have to immediately counter with self-defense techniques. All of the intermediate steps on the diagram naturally would have to be by-passed. Remember, what is the reasonable and necessary amount of force for

one officer may not be enough for another. There are many variables that can affect the degree of force an officer must use. These variables include the size of the suspect, the size of the officer, and the weapon being utilized by the suspect. The objective is: *escalate or de-escalate to the minimum force necessary for control of the suspect.*

Emotional involvement should not be a factor in escalation or de-escalation. In order to react to every situation with the minimum amount of force necessary, an officer must possess not only self-defense skills, but a mature, professional attitude as well. Prejudices, anxieties, and self-doubt could very easily contribute to "over-escalation" of a situation. The officer must make every effort not to become personally involved when a suspect resists apprehension and arrest—but to react professionally and impartially.

Summary

The use of force is a judgment which places a heavy responsibility on each officer. There is no way anyone can tell an officer how to react to every specific situation that may occur in the field. But, in every case requiring the use of physical force, each officer must employ the concepts developed here as a guide. The officer should use physical force only to the extent necessary to secure observance of the law or to restore order. Physical force is utilized only when the exercise of persuasion, advice, and warning is found to be insufficient to achieve compliance. When physical force is employed, an officer may use only the reasonable amount of force necessary to gain compliance.

Deadly force is the ultimate force an officer may utilize within the escalation theory. Part II of this bulletin will discuss the use of deadly force as it relates to the Department's revised shooting policy.

## APPENDIX H

### Training Bulletin

### Control Holds

Part II

(May, 1978)

Control holds afford officers momentary advantage over combative suspects and allow officers to subdue any resistance by the suspects. This series of bulletins describes the control holds currently approved by the Department and taught at the Police Academy. Officers should review the information presented in the Use of Force series of Training Bulletins for an understanding of when a control hold is a proper response to a suspect in the escalation of force. Control holds should be used only when necessary to stop a suspect's resistance. The intent of using control holds is only to overcome that resistance and not necessarily to cause unconsciousness. Only that force necessary to control a suspect may be used. By so doing, officers may afford themselves maximum safety while subjecting the suspect to a minimum possibility of injury.

The Modified Carotid Takedown and Control

This takedown and control hold can provide an officer momentary advantage over a suspect. This momentary advantage may be sufficient to control a suspect, thereby permitting an officer to take the suspect into custody. Application of this hold will be explained from the interrogation position as a right-handed officer would execute this move. Left-handed officers need only reverse the moves as described from right to left.

A right-handed officer interviewing a suspect will have the left foot forward, the right leg back, and gun hip turned

away from the suspect. (See Photo No. 1) When the need arises to control a combative suspect, the officer should:

1

2

3

a. Firmly push suspect's left shoulder with the palm of the right hand (thumb pointing up) and, at the same time, grip the suspect's right elbow with the left hand. (See Photos No. 2&3)

4

5

b. Step forward with the left foot to the rear of the suspect's left foot.

c. Maintain a loose grip with the left hand on suspect's right elbow and drive the left forearm into the small of the back to arch the suspect's back. (See Photo No. 4)

d. Wrap the right arm around the suspect's neck between the throat and the carotid. At this point pressure is applied to the suspect's neck between the throat and the carotid artery with the lower forearm. (See Photo No. 5)

6

7

e. Pull the suspect backwards so that the suspect's back is in contact with the officer's chest. (See Photo No. 6)

f. Step back with the right foot to the rear. (See Photo No. 7)

8

g. Carefully drop down on both knees. (See Photo No. 8)

9

10

h. Move to the Carotid Control as soon as practicable. (See Photos No. 9 & 10) Note that the crook of the elbow is under the suspect's chin, lifting the head slightly in an upward motion. The bicep and forearm compress the sides of the suspect's neck. Grip right wrist with left hand and push to increase the pressure.

11

12

i. Move into the the locked carotid control if the suspect continues to resist. The officer can do this by driving the right thumb into the left armpit, then grip the upper left arm with the right hand. Flex the right arm and extend the left hand beyond the right shoulder — this will draw the officer's right arm tighter around the suspect's neck. (See Photos No. 11 & 12)

13

There may be suspects who resist so violently that an officer may be unable to effectively apply the carotid control or the modified carotid. In such a case, the officer may then have to resort to the bar arm control. (See Photo No. 13) The bar arm may be applied in such cases until the officer is able to apply the modified carotid or the carotid until the suspect ceases to resist.

The carotid control is a very effective hold. The bicep and forearm of the officer's right arm compress the sides of the suspect's neck, impairing the blood flow through the carotid arteries to the brain. As the brain is deprived of oxygen, the suspect will become limp. *When the suspect stops resisting or goes limp, the officer must stop applying pressure*. The use of the modified carotid, carotid and locked carotid controls will reduce the possibility of injury to the suspect's trachea or larynx, but these holds do impair the flow of blood to the brain. There is a critical three minute interval after which the brain can no longer tolerate the

absence of oxygen. *Do not apply continuous pressure for more than three minutes*. This could kill the suspect or cause brain damage. Normally the carotid control holds, if applied properly, will render a suspect unconscious in approximately 8-14 seconds. It must be emphasized that control holds are only used for overcoming resistance. When resistance is overcome prior to rendering a suspect unconscious, the officer must release the hold and proceed to maintain control as the situation dictates.

*Note*: The carotid control hold can be applied from a standing position and, if an officer is able, the officer may apply it. If the suspect is taller or larger framed than the officer, some difficulty will be experienced attempting a carotid control from a standing position.

The Bar Arm Takedown and Control

Recent experience has shown that suspects under the influence of certain drugs are oblivious to pain-compliance holds such as the bar arm. As a consequence, both officers and suspects have been injured while officers attempted to control a suspect under the influence with the bar arm control.

The carotid control and the locked carotid control are much more effective in controlling a suspect, and if necessary, to render a combative suspect unconscious. In order to minimize any serious injury to the suspect the officer should attempt to shift to the modified carotid as soon as possible before taking the suspect down. However, in the event that the suspect is uncontrollable and the officer is unable to apply the modified carotid, the officer may have to resort to the bar arm to take the suspect down. To apply the bar arm control, an officer should:

14

15

a. Firmly push the suspect's left shoulder with the palm of the right hand (thumb pointing up) and, simultaneously, grip the suspect's right elbow with the left hand.

b. As the suspect's body turns, step behind the suspect and place the left foot behind the suspect's left foot.

c. Draw the right forearm snugly against the throat and strike the suspect in the small of the back with the left forearm to force the suspect's back to arch. (See Photo No. 14)

d. Position the suspect's head on the officer's right shoulder. (See Photo No. 15)

e. Step back with the right leg and at the same time, the officer should pull back with the right forearm against the suspect's throat.

16

f. Step back with the left foot and drop down on both knees. (See Photo No. 16)

17

18

g. Move to the modified carotid, carotid control or locked carotid control hold as soon as practicable. (See Photos No. 17 & 18)

19

20

h. The chancery is another option available to an officer if the officer is unable to apply the carotid control holds. The chancery is a locked bar arm control. From the bar arm, the officer grips the left bicep with the right hand. The officer then flexes the left arm and places the left hand on the back of the suspect's head. (See Photos No. 12 & 20) The officer should draw the right arm in towards the chest. At the same time, the officer bears down with the left hand against the back of the suspect's head. This hold also causes pain and cuts off oxygen to the lungs.

i. Stop applying pressure as soon as the suspect stops resisting or goes limp.

When a situation escalates to the point in which a control hold is necessary to restrain and control a suspect, both the officer and the suspect are prone to injury. It is much more preferable to employ persuasion and command presence to control a situation. When it does become necessary to apply a control hold, proficiency with the control holds described will enable an officer to restrain a combative suspect.

# Supplemental Brief

1

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No. 81-1064
IN THE

# Supreme Court of the United States

October Term, 1981

THE CITY OF LOS ANGELES,

*Petitioner*

*v.*

ADOLPH LYONS,

*Respondent*

**On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

## MEMORANDUM SUGGESTING A QUESTION OF MOOTNESS AND ADDRESSING RELATED ISSUES

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## TABLE OF CONTENTS


| | Page |
|---|---|
| Background | 1 |
| Recent Developments | 3 |
| The Case Is Not Moot | 4 |
| The Stay Order Should Not Be Lifted | 6 |
| Conclusion | 8 |


## TABLE OF AUTHORITIES

### Cases


Bell v. Wolfish, 441 U.S. 520 (1979) ..... 6

City of Mesquite v. Aladdin's Castle, Inc., ... U.S. ..., 102 S.Ct. 1070, 71 L.Ed.2d 152 (1982) .... 4, 5

County of Los Angeles v. Davis, 440 U.S. 625 (1979) ..... 5

Powell v. McCormack, 395 U.S. 486 (1969) ..... 4

Princeton University v. Schmid, ... U.S. ..., 102 S.Ct. 867, 70 L.Ed.2d 855 (1982) ..... 5

Rizzo v. Goode, 423 U.S. 362 (1976) ..... 7

Rochin v. California, 342 U.S. 165 (1952) ..... 2

United States v. W. T. Grant Co., 345 U.S. 629 (1953) ..... 4


### Constitution


United States Constitution, Fourteenth Amendment ... 2


### Miscellaneous


Note, *The Mootness Doctrine in the Supreme Court*, 88 HARV. L. REV. 373, 376 (1976) ..... 4

R. STERN & E. GRESSMAN, SUPREME COURT PRACTICE (5th ed. 1978) ..... 1, 4

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## MEMORANDUM SUGGESTING A QUESTION OF MOOTNESS AND ADDRESSING RELATED ISSUES

The purpose of this memorandum is to bring to the Court's attention recent factual developments which give rise to questions concerning mootness and the continued need for a stay of the court of appeals' mandate pending the Court's decision in this case. While the petitioner City of Los Angeles ("City") believes neither the case to be moot nor the stay to be unnecessary, the City and its counsel nonetheless recognize their duty to bring such factual developments to the Court's attention and to address these issues. See R. STERN & E. GRESSMAN, SUPREME COURT PRACTICE 896 (5th ed. 1978).

### Background

The documents already on file recount that the Los Angeles Police Department ("LAPD") since 1936 has authorized and trained its officers in the use of certain upper-body neck restraints (the "control holds") as a mid-range

control device for use in coping with attacking or resisting suspects. These holds, borrowed from the sport of judo, apply pressure to either the carotid arteries (the "carotid holds") or to the front of the neck (the "bar arm holds").

The action filed by the respondent sought to limit the use of such holds to circumstances where officers are confronted by threats of the "immediate use of deadly force." A. 17[1] One of the theories on which the respondent proceeded was that use of the holds in less than life-threatening circumstances "shocks the conscience" and hence violates the substantive due process rights of persons upon whom they are applied under the Fourteenth Amendment's Due Process Clause as interpreted by the Court in *Rochin v. California*, 342 U.S. 165 (1952). The district court adopted this theory and issued a preliminary injunction limiting use of the control holds to threats of "death or serious bodily harm." Pet. App. 21a, 27a. The control holds, or variations thereof, are used by most major police departments in the country. See City Br. 11 & n. 14.

While the City has never regarded the holds as failsafe, it has maintained that the risks of injury or death are exceedingly small. The respondent directed the district court's attention to the deaths of 9 individuals whose deaths the respondent ascribes to the control holds. Since that time there have been 6 additional deaths which the respondent places in the same category, making 15 deaths in all in the past 7 years. While these 15 deaths have thus been *associated* with use of the control holds, the City has been and remains at the moment unwilling to agree with the respondent that the holds were the *cause* of these fatalities. There are two reasons for the City's position. First, the present

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[1] "A." refers to the joint appendix on file in this Court. "Pet. App." refers to the appendix to the petition.

state of the evidence does not lend itself to firm conclusions about causation. The coroner's records do not ascribe all of these deaths to the control holds, and the persons who prepared these records have yet to be cross-examined on their substance. Second, the record and other evidence strongly suggest that in the vast majority of these deaths, other factors played significant roles (*e.g.*, other force techniques, pre-existing physiological conditions, and drugs). These conclusions apply both to the first 9 deaths, which are part of the record, and to the last 6 deaths, which are not. But these deaths constitute a stark reality which cannot be ignored and, as the recent developments set forth below will demonstrate, has not been ignored by City government.

**Recent Developments**

Following the most recent of these deaths (of James Mincey, Jr. on April 5, 1982), the LAPD's use of the control holds became a major civic controversy. Numerous public hearings were conducted by a committee of the Los Angeles City Council and by the City's Board of Police Commissioners. The City's Chief of Police made a number of pronouncements and issued a number of statements on the matter. One issue in this controversy was whether the control holds were being applied in a manner discriminating against Blacks. In sum, a spirited vigorous, and at times emotional public debate ensued during the months of April and May of this year.

Subsequently, LAPD policy on use of the control holds was substantially modified. The Board of Police Commissioners imposed a six-month moratorium on the more commonly used technique, the carotid holds, excepting their use under circumstances when "deadly force is authorized." Partial transcript of Board of Police Commissioners proceedings of May 12, 1982 10. The Chief of Police, days

earlier, had prohibited use of the less frequently used and more dangerous bar arm technique. During the period of the moratorium on the carotid holds, the LAPD has been directed by the Board to "use and assess the effectiveness of the use of alternative control techniques, such as the Taser, Chemical Shield, capture nets, the Monadnock baton, and other methods, and . . . report . . . its findings [to the Board] every two months." *Id.* at 11.

**The Case Is Not Moot**

Decisions of this Court make plain that despite these developments, the respondent's efforts to obtain injunctive and declaratory relief against the City are not moot.[2] A case becomes moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496 (1969). The "voluntary cessation of allegedly illegal conduct" does not of its own force moot a case, *United States v. W. T. Grant Co.*, 345 U.S. 629, 632 (1953); see *City of Mesquite v. Aladdin's Castle, Inc.*, ... U.S. ..., 102 S.Ct. 1070, 1074 & n.10, 71 L.Ed.2d 152 (1982); *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979), but mootness will occur nonetheless if (a) it can be "said with assurance" that there is no reasonable expectation that the "alleged

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[2]The first issue on which certiorari was granted was whether the respondent has standing to bring this action. Mootness has frequently been characterized as the disappearance of a previously existing "case or controversy." The City, of course, maintains that a "case or controversy" between the respondent and City government has heretofore not existed and does not now exist. "Mootness questions arise only once a court has determined, usually implicitly, that a litigant has standing to bring the action . . . ." Note, *The Mootness Doctrine in the Supreme Court*, 88 HARV. L. REV. 373, 376 (1976), *quoted at* R. STERN & E. GRESSMAN, SUPREME COURT PRACTICE 886 n. 5 (5th ed. 1978). In actuality, therefore, mootness cannot be addressed until the Court first addresses whether the respondent has standing to obtain equitable relief.

violation will recur" and (b) "interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." *County of Los Angeles v. Davis, supra,* 440 U.S. at 631. "When both conditions are satisfied it may be said that the case is moot because neither party has a legally cognizable interest in the final determination of the underlying questions of fact and law." *Id.* No mootness was found in a recent case wherein the defendant indicated that it would resume the challenged conduct absent a judicial barrier. *City of Mesquite v. Aladdin's Castle, Inc., supra,* 102 S.Ct. at 1075 n. 11. Mootness was recently found, however, in a case wherein the party who had discontinued the challenge conduct (an intervenor) had given no such indication. *Princeton University v. Schmid,* ... U.S. ..., 102 S.Ct. 867, 70 L.Ed.2d 855 (1982); see *City of Mesquite v. Aladdin's Castle, Inc., supra,* 102 S.Ct. at 1078 n. (concurring and dissenting opinion of Mr. Justice White). The instant case falls somewhere between these cases.

The City's change in policy has not made the case moot if only because the City simply cannot now speak with assurance about the future. It is true that the moratorium on the carotid hold is for an expressly delimited period while the prohibition on the use of the bar arm is not so limited. But whatever policies are enunciated at a particular time on a subject such as the use of force, where human life is literally at stake, must perforce be changeable at will as circumstances dictate. Because the future cannot be predicted with certainty, City government cannot under these circumstances legitimately commit itself to refrain forevermore (or even absolutely during the moratorium) from using the control holds. Hence, the City cannot now "say with assurance" that there is no "reasonable expectation" that the control holds will again be used. What it can, and does, say is that the present policy is now thought to be the

most humane and, thus, the correct policy, with the understanding that it is subject to change as circumstances warrant. It must be kept in mind in this regard that during the next few months the LAPD will be reviewing alternative techniques and its experience without the control holds. Such an inquiry would be unnecessary if its result could be foretold at the outset.

Perhaps the closest recent analogue to the City's circumstance was considered by the Court in *Bell v. Wolfish*, 441 U.S. 520, 542 n. 25 (1979):

> "That petitioners were able to comply with the District Court's order does not make this case moot, because petitioners still dispute the legality of the court's order and they have informed the Court that there is a reasonable expectation that they may be required to [resume the conduct in question]."

As the petitioners in *Bell*, the City takes issue with the legality of the district court's order herein and asserts that inasmuch as circumstances *may* require it to resume use of the control holds, there is necessarily a "reasonable expectation" thereof. In addition, the public interest requires that the issues before the Court now be addressed. The circumstances under which persons may seek declaratory or injunctive relief against local police departments and under which the federal courts may administer organs of local government evidently require either clarification or emphasis.

**The Stay Order Should Not Be Lifted**

There remains in effect a stay of mandate issued by the Circuit Justice for the Ninth Circuit, Mr. Justice Rehnquist, the effect of which is to permit the City to use the control holds. As the City has placed a moratorium on use of the

more commonly used holds, the issue arises as to whether the stay should remain in effect.

The City readily admits that some of the pressing circumstances presented to Mr. Justice Rehnquist last September are now thought not to exist. In its application for the stay, the City contended that the preliminary injunction would have the effect of causing "more injuries to and deaths of suspects." Application 12 (A-230). That was the sincere belief of City government at the time, but a different view is obviously held presently. But the stay order had other bases as well. In his memorandum opinion in support of the stay, Mr. Justice Rehnquist stated that "[t]here is sufficient doubt about the correctness of the basic holding of the Court of Appeals with respect to standing on the part of the respondent, together with sufficient equities in favor of the City, to warrant" the stay. .... U.S. ...., Pet. App. 35a.

The respondent's lack of standing, in particular, should give the Court pause before lifting the stay. After all, the respondent's standing has not been enhanced one whit by recent developments. And, that the City has, at least for the present, agreed with the district court *as a matter of police policy* that use of the control holds should be severely restricted, demonstrates that there is simply no need for federal judicial control. The City is clearly able to handle its affairs. Hence, the "most extraordinary circumstances" required by this Court for federal judicial administration of local government certainly do not now exist. See *Rizzo v. Goode*, 423 U.S. 362, 378-380 (1976). If the City should find in the next few months that the welfare of suspects and officers requires that its present policy be abandoned or modified, the City must have the flexibility to make necessary changes without first having to obtain court approval.

## Conclusion

In conclusion, the City respectfully submits that the case is not moot and that the stay order should remain in effect.

Dated: June 2, 1982

Respectfully submitted,

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# Supplemental Brief

2

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October Term, 1982

THE CITY OF LOS ANGELES,

*Petitioner*

*v.*

ADOLPH LYONS,

*Respondent*

**On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

## SUPPLEMENTAL BRIEF CONCERNING RECENT FACTUAL AND LEGAL DEVELOPMENTS

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## TABLE OF CONTENTS


Page

I.

Recent Factual Developments ..... 1

A. The Los Angeles Police Department Submits Two Reports on Alternative Force Techniques ..... 1

B. The Moratorium Is Likely to Be Addressed by the Board of Police Commissioners on November 9, 1982 ..... 2

C. Recent Fatalities ..... 2

II.

Recent Legal Developments ..... 4


## TABLE OF AUTHORITIES


Rule

Rules of the United States Supreme Court, Rule 35.5 ..... 1

Treatise

R. STERN & E. GRESSMAN, SUPREME COURT PRACTICE (5th ed. 1978) ..... 1

No. 81-1064

IN THE

# Supreme Court of the United States

October Term, 1982

THE CITY OF LOS ANGELES,

*Petitioner*

*v.*

ADOLPH LYONS,

*Respondent*

## SUPPLEMENTAL BRIEF CONCERNING RECENT FACTUAL AND LEGAL DEVELOPMENTS

The purpose of this brief is to bring to the Court's attention certain recent developments, factual and legal, which because of their recency are not before the Court and which may be of some relevance to the instant proceeding. See Rule 35.5, Rules of the United States Supreme Court; R. STERN & E. GRESSMAN, SUPREME COURT PRACTICE 716, 760 & n. 44 (5th ed. 1978).

### I.
### RECENT FACTUAL DEVELOPMENTS

### A. The Los Angeles Police Department Submits Two Reports on Alternative Force Techniques

The Court may recall that when the City's Board of Police Commissioners imposed the six-month moratorium on use of the carotid holds (except in deadly force situations) on May 12, 1982, it directed Los Angeles Police Department

("LAPD") staff to use and assess the effectiveness of alternative control techniques and report its findings to the Board every two months. See City's Memorandum Suggesting a Question of Mootness and Addressing Related Issues 3-4 (June 2, 1982). The first such report (for the period 5-12-82 through 6-30-82) was submitted in writing by the Chief of Police on August 10, 1982 and the second (for the period 7-1-82 through 8-15-82) on September 16, 1982.[1] The reports described and to some extent commented on the LAPD's experience in using alternative force techniques, identified changes being made in reporting and training policies, provided comparative data on use of force techniques, and detailed a number of incidents wherein it was thought that the unavailability of the control holds led to greater injuries or other problems. The Board received both reports without taking action.

**B. The Moratorium Is Likely to Be Addressed by the Board of Police Commissioners on November 9, 1982**

LAPD and Board staff indicate that a third report (for the period 8-16-82 through 9-30-82) is expected shortly and that the Board is likely to address the impending (November 12) expiration of the moratorium on November 9.

**C. Recent Fatalities**

Two officer-involved fatalities occurring after imposition of the moratorium appear to be of some relevance.[2] Within the span of one week, these two persons died evidently shortly after arriving at medical facilities following transport

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[1]A copy of these documents has been supplied to the respondent's counsel.

[2]LAPD records indicate that since imposition of the moratorium 14 other persons also were involved in officer-involved fatalities: 12 by shooting and 2 by suicide.

by LAPD officers: Kevin Marlbrough (died July 24, 1982) and Donald R. Wilson (died July 31, 1982).[3] Both individuals prior to death had displayed highly irrational, bizarre, and sometimes violent behavior. Both were later determined by the Los Angeles County coroner to have had phencyclidine (PCP) in various organs of the body, including the brain, at the time of death. Both had been in an altercation prior to transport: Mr. Marlbrough with citizens, Mr. Wilson with LAPD officers. Both were bound hand and foot during transport.

There is no evidence suggesting that a control hold was applied upon Mr. Marlbrough. A modified carotid control hold, among other force techniques, was applied upon Mr. Wilson. According to the transporting officers, this occurred when they believed that they had lost control of Mr. Wilson during transport.[4] The coroner's report attributed Mr. Wil-

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[3]The facts set forth herein are derived from LAPD reports on each fatality. Each report includes the coroner's autopsy report as an attachment. The Marlbrough report was completed on September 23, 1982, and the Wilson report on October 13, 1982. A copy of these reports has been supplied to the respondent's counsel.

These reports are factual in nature and are of the same genre as the 7 reports reproduced at A. 407-564. Separate procedures (entailing separate reports) exist whereby officer conduct in such incidents is evaluated. This evaluation process as to both the Marlbrough and Wilson fatalities has not yet reached the levels of the Chief of Police and the Board.

[4]The officers relate the following. Mr. Wilson, despite being bound hand and foot, evidently was able to stand up in the back seat area of the patrol car, at least to the extent that he was able to push his back up against the roof of the vehicle. The driving officer stopped the vehicle on the right shoulder of the Harbor Freeway so that the officers could rearrange Mr. Wilson's position in the rear seat compartment. Upon pulling Mr. Wilson out of the vehicle, the passenger officer relates that there was little space between the vehicle and a short guard rail protecting a steep embankment. He further relates that Mr. Wilson stood up and was pushing and pinning such officer against the rail such that the officer feared that he would be pushed over. While the officer admits that he was aware of the restrictions placed upon use of the control holds, he applied the hold because he believed that "his life was in

(footnote continued on following page)

son's death to "sudden death associated with blunt force injury to neck and myocardial fibrosis and scarring." Mr. Marlbrough's death was ascribed by the coroner to "sudden death following altercation with bizarre behavior while under influence of phencyclidine."

The Wilson death sparked public controversy. Some persons complained that officers were either ignorant of or disobeying the moratorium. The LAPD, through the Chief of Police and his subordinates, had already notified officers of the moratorium utilizing three departmental systems of notification: teletype, mail, and memorandum systems. At the August 10 session of the Board the Chief announced that to ensure that officers were aware of the moratorium, they would be notified in writing individually. Shortly thereafter, the LAPD acceded to a request of the respondent's counsel that it obtain a signed acknowledgment of such notice from each officer. The LAPD subsequently decided to obtain acknowledgments from civilian employees as well.

## II.
## RECENT LEGAL DEVELOPMENTS

On August 9, 1982 the respondent noticed motions before the district court for (a) permission to file a supplemental complaint and (b) injunctive relief, the overall thrust of which would have been to require the LAPD to notify its officers in writing of the changes in control hold policy and

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jeopardy." Following application of the hold for 20-30 seconds, Mr. Wilson, who did not lose consciousness, was placed again in the rear seat compartment and transport continued. It was during this remaining segment of transport that it was determined that Mr. Wilson had become very quiet and a question was raised as to whether a pulse could be felt.

The Chief of Police and the Board have yet to pass upon whether the hold applied upon Mr. Wilson conformed to the moratorium policy. See n. 3 *supra*.

to obtain a signed acknowledgment from each officer of such notice. On the following day, as indicated above, the LAPD agreed to provide such notice. The respondent subsequently took his motions off calendar.

The City through its counsel refused on jurisdictional grounds[5] to enter into a stipulation, requested by the respondent, to be filed in the district court whereunder the City would agree to provide the notice and acknowledgment mentioned above.[6] The respondent subsequently renewed his motions, contending that notwithstanding the assurances given by the City, his counsel had no "admissible proof" that officers had been notified of and understood the change in control hold policy, nor did he have such proof that the City had "instituted any procedure to assure that senior officers are accountable for such notification . . . ." Declaration of Michael R. Mitchell (September 15, 1982) 6:19-27. The City opposed the motions primarily on jurisdictional grounds (noting that the respondent was seeking federal judicial enforcement of an order of the Board, not of the court), but also provided the district court with data reflecting the number of LAPD personnel who had returned signed acknowledgments.[7] The respondent subsequently advised the court that in view of the evidence of notice and receipt before it, an injunction was unnecessary. He also asked that the supplemental complaint be filed and dismissed without prejudice and "without waiver of rights to attorney's fees under 42 U.S.C. §1988 on the grounds that the issue has

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[5]The grounds at issue before this Court: standing and federalism.

[6]The LAPD was obtaining, as noted, signed acknowledgments from all LAPD personnel, officer and civilian. The City offered to provide the respondent with evidence of such acknowledgments but only outside of the context of this litigation.

[7]As of October 20, 1982, only 38 officer and 17 civilian personnel had yet to return such forms. The LAPD employs 6884 officer and 2575 civilian employees.

been mooted by the City's corrective action.'' Plaintiff's Reply to Defendants' Opposition 3:22-25.

On October 20, 1982 the district court entered an order denying both the motion to file a supplemental complaint and the motion for a preliminary injunction.

Dated: October 26, 1982

Respectfully submitted,

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# Joint Appendix

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No. 81-1064

IN THE

# Supreme Court of the United States

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CITY OF LOS ANGELES,

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*v.*

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**On Writ of Certiorari to the Ninth Circuit Court of Appeals**

## JOINT APPENDIX

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**PETITION FOR CERTIORARI FILED DECEMBER 8, 1981**
**CERTIORARI GRANTED FEBRUARY 22, 1982**

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JOINT APPENDIX

Page

Relevant Docket Entries ..... 1

**Documents before District Court and Court of Appeals**

Complaint for Damages, Civil Rights; Preliminary and Permanent Injunction; Declaratory Relief; Affidavit of Adolph Lyons. Demand for Jury Trial ..... 5

Order Granting Partial Judgment on the Pleadings in Favor of Defendant City of Los Angeles and Denying Sanctions ..... 21

First Amended Complaint for Damages; Civil Rights; Preliminary and Permanent Injunctions; Declaratory Relief. Demand for Jury Trial ..... 23

Excerpts From the Deposition of Adolph George Lyons. June 9, 1977 (Exhibit 1) ..... 35

Selected Interrogatories and Responses from Janet Denise Wagner, et al. vs. City of Los Angeles, et al. (Superior Court of California, County of Los Angeles, No. CA 000488) (Exhibit 29) ..... 37

Los Angeles Police Department Training Bulletins: Vol. IV, Issue 16, July 31, 1972, "Control Holds - Part I" and Vol. IV, Issue 17, July 31, 1972, "Control Holds - Part II" (Exhibit 49) ..... 41

Board of Police Commissioners. Report on Policies of Los Angeles Police Department Regarding the Use of Physical Force in Subduing Suspects. September 27, 1978 (Exhibit 60) ..... 49

Page

26 Los Angeles Police Department, Intradepartmental Correspondence Regarding "Statistics on Use of Control Holds and Related Training," February 21, 1979 (Exhibit 30) ..... 221

27 Declaration of Pascal Kenneth Dionne in Opposition to the Issuance of a Permanent Injunction or a Declaration That the Bar-Arm or Carotid Control Holds Are Unconstitutional Application of Force (Exhibit 50) ..... 227

28 Excerpts From the Deposition of Pascal Kenneth Dionne. September 19, 1980 (Exhibit 68) ..... 297

15 Affidavit of Eichi Karl Koiwai, M.D. September 15, 1980 (Exhibit 51) ..... 303

16 Excerpts From the Deposition of Eichi K. Koiwai, M.D. September 22, 1980 (Exhibit 66) ..... 327

17 Declaration of Henry W. Dodge, M.D. October 28, 1980 (Exhibit 53) ..... 331

18 Excerpts From the Deposition of Henry Dodge, M.D. November 14, 1980 (Exhibit 65) ..... 353

19 Declaration of Richard H. Fine, M.D. November 14, 1980 (Exhibit 36) ..... 357

20 Declaration of Alex Griswold, M.D. August 18, 1980 (Exhibit 37) ..... 363

21 Declaration of Bruce Tegner. July 21, 1980 (Exhibit 35) ..... 369

22 Excerpts From the Deposition of Thrift Hanks, M.D. August 27, 1980 (Exhibit 73) ..... 373

Page

Excerpts From the Deposition of Terry Clark Speer. October 14, 1980 (Exhibit 70) ..... 379

Excerpts from the Deposition of Llewellis E. Ritter, from Booker Ford v. City of Los Angeles (C.D. Cal. No. CV 76-2704 (LEW), July 27, 1979 (Exhibit 42) ..... 383

Excerpts From the Deposition of Robert Lee Jarvis. October 16, 1980 (Exhibit 72) ..... 385

Excerpts From the Deposition of Raymond Sua. October 2, 1980 (Exhibit 71) ..... 389

Excerpts From the Deposition of Takayuki Kubota. September 4, 1980 (Exhibit 67) ..... 395

Selected Requests for Admissions (Exhibit 27) ..... 399

Los Angeles Police Department Report on the Death of Carl Middleton (Exhibit 3) ..... 407

Selected Portions of the Autopsy Report of Carl Middleton (Exhibit 2) ..... 429

Los Angeles Police Department Report on the Death of Francis Fairbanks (Exhibit 5) ..... 433

Selected Portions of the Autopsy Report of Francis Fairbanks (Exhibit 4) ..... 447

Los Angeles Police Department Report on the Death of Booker Ford (Exhibit 7) ..... 451

Selected Portions of the Autopsy Report of Booker Ford (Exhibit 6) ..... 465

Page

Los Angeles Police Department Report on the Death of Edward Dailey (Exhibit 9) ..... 467

Selected Portions of the Autopsy Report of Edward Dailey (Exhibit 8) ..... 483

Los Angeles Police Department Report on the Death of Alvin Whitehead (Exhibit 11) ..... 487

Selected Portions of the Autopsy Report of Alvin Whitehead (Exhibit 10) ..... 507

Los Angeles Police Department Report on the Death of David Adkins (Exhibit 13) ..... 513

Selected Portions of the Autopsy Report of David Adkins (Exhibit 12) ..... 533

Los Angeles Police Department Report on the Death of James Wright (Exhibit 46) ..... 537

Selected Portions of the Autopsy Report of James Wright (Exhibit 18) ..... 555

Press Release on the Death of Larry Morris (Exhibit 21) ..... 557

Selected Portions of the Autopsy Report of Larry Morris (Exhibit 20) ..... 561

Press Release on the Death of Robert Cameron, December 21, 1979 (Exhibit 17) ..... 565

Selected Portions of the Autopsy Report of Robert Cameron (Exhibit 16) ..... 568

Reporter's Transcript of Proceedings. Los Angeles, California, December 18, 1980 ..... 571

Page

**Documents before Court of Appeals but not District Court**

Declaration of Daryl F. Gates, December 23, 1980 ..... 617

Declaration of Robert L. Good, December 23, 1980 ..... 619

The following opinions, decisions, judgments, orders, and documents have been omitted in printing this appendix because they appear on the following pages in the appendix to the printed petition for certiorari:


| | Page |
|---|---|
| Constitutional provisions and statute involved ..... | 1a |
| Opinion of the Court of Appeals for the Ninth Circuit, dated March 28, 1980 (*Lyons I*), 615 F.2d 1243 ..... | 3a |
| Order denying certiorari; dissenting opinion (*Lyons I*) ..... | 18a |
| Preliminary injunction order of the District Court for the Central District of California, dated December 23, 1980 (*Lyons II*) ..... | 21a |
| Findings of fact and conclusions of law of the District Court for the Central District of California, dated December 23, 1980 (*Lyons II*) ..... | 23a |
| Opinion of the Court of Appeals for the Ninth Circuit, dated August 17, 1981, as amended August 20, 1981; rehearing denied September 11, 1981 (*Lyons II*), 656 F.2d 417 ..... | 28a |
| Memorandum opinion granting application for stay by Circuit Justice Rehnquist, dated September 29, 1981 ..... | 31a |
| Training Bulletin, Use of Force, Part I (May, 1978) (not before district court) ..... | 36a |
| Training Bulletin, Control Holds, Part II (May, 1978) ..... | 41a |

**Relevant Docket Entries.**

| Date | Filings — Proceedings |
|---|---|
| February 7, 1977 | Plaintiff files complaint for damages, preliminary and permanent injunction, and declaratory relief in the U.S. District Court for the Central District of California. No. CV 77-0420-RMT. |
| April 18, 1977 | District court (the Honorable Robert M. Takasugi, U.S. District Judge), on the City's* motion opposed by plaintiff, dismisses counts III and IV as to the City for failure to state a cause of action. |
| April 21, 1977 | City files its answer in district court. |
| May 11, 1977 | District court, on City's motion opposed by plaintiff for partial judgment on the pleadings, (a) dismisses plaintiff's claims under the First and Eighth Amendments in count II and (b) dismisses counts V, VI, and VII. |
| May 20, 1977 | District court enters judgment for the City with respect to counts V, VI, and VII.<br>Plaintiff files notice of appeal in district court. |
| May 26, 1977 | Plaintiff files amended notice of appeal in district court. |

*References to the "City" sometimes include individual police officer defendants.

| | |
|---|---|
| April 5, 1979 | Case 77-2591 argued and submitted in the Ninth Circuit Court of Appeals before the Honorable Elbert P. Tuttle, C.J., Fifth Circuit Court of Appeals sitting by designation, the Honorable Ozell M. Trask, and the Honorable J. Blaine Anderson, C.J.J. |
| August 31, 1979 | District court order entered removing case from active caseload. |
| March 28, 1980 | Court of appeals files opinion (per Tuttle, Sr. C.J.) and enters judgment affirming district court's dismissal of count VII and reversing dismissal of counts V and VI. No. 77-2591. |
| June 18, 1980 | City files petition for a writ of certiorari in the U.S. Supreme Court. No. 79-1995. |
| July 22, 1980 | Circuit Justice for the Ninth Circuit, Mr. Justice Rehnquist, denies City's application for stay of district court proceedings. A-53. |
| September 15, 1980 | District court declares "reopening" of case. |
| October 1, 1980 | Plaintiff files first amended complaint in district court. |
| October 15, 1980 | City files answer to first amended complaint in district court. |
| October 16, 1980 | District court order entered permitting plaintiff to amend his complaint. |
| October 20, 1980 | U.S. Supreme Court denies the petition for writ of certiorari, with three Justices dissenting. 449 U.S. 934. |

| | |
|---|---|
| November 17, 1980 | Plaintiff files application for preliminary injunction and declaratory relief in district court. |
| December 18, 1980 | Argument heard on preliminary injunction in district court. |
| December 23, 1980 | District court files findings of fact and conclusions of law respecting preliminary injunction. |
| | District court files and enters preliminary injunction order, effective December 29, 1980 at 4:30 p.m. |
| | City files notice of appeal in district court. |
| December 24, 1980 | Court of appeals (the Honorable Alfred T. Goodwin and the Honorable Joseph T. Sneed, C.J.J.) files order, on City's emergency motion opposed by plaintiff, staying preliminary injunction order pending appeal. No. 80-6078. |
| December 31, 1980 | Plaintiff files notice of cross-appeal in district court. |
| July 7, 1981 | Cases 80-6078 and 81-5023 (the cross-appeal) argued and submitted before the Honorable Alfred T. Goodwin, the Honorable Procter Hug, Jr., and the Honorable Jerome Farris, C.J.J. |
| August 17, 1981 | Court of appeals files opinion (per curiam) and enters judgment (a) affirming preliminary injunction and dismissing appeal in case no. 80-6078 and (b) dismissing cross-appeal in case no. 81-5023. |
| August 20, 1981 | Court of appeals files amended opinion. |

| | |
|---|---|
| September 11, 1981 | Court of appeals files order denying the City's petition for rehearing and motion for stay of mandate. |
| September 17, 1981 | Circuit Justice for the Ninth Circuit, Mr. Justice Rehnquist, upon the City's application, orders stay of execution and enforcement of the court of appeals' mandate in case nos. 80-6078 and 81-5023 pending receipt of a response and further order of himself or of the Court. A-230. |
| September 29, 1981 | Mr. Justice Rehnquist continues stay of mandate pending timely filing and disposition of a petition for a writ of certiorari, providing, in part, that should such petition be granted, the stay is to "continue in effect pending the sending down of the judgment of this Court." A memorandum opinion was filed with this order. ____ U.S. ____, 102 S.Ct. 14, 69 L.Ed.2d 1015. |
| December 8, 1981 | City files petition for a writ of certiorari. No. 81-1064. |
| February 22, 1982 | The Court grants the City's petition for a writ of certiorari. |

**Complaint for Damages, Civil Rights; Preliminary and Permanent Injunction; Declaratory Relief; Affidavit of Adolph Lyons. Demand for Jury Trial.**

United States District Court, Central District of California.

Adolph Lyons, Plaintiff, vs. City of Los Angeles, Doe Crupi, Doe Hills, Doe Sandoval and Doe Lloyd, Defendants.

Plaintiff alleges the following upon information and belief, except paragraphs 8, 9, 21 and 26, which are alleged upon knowledge:

COUNT I

AGAINST DEFENDANTS DOE CRUPI, DOE HILLS, DOE SANDOVAL AND DOE LLOYD ONLY.

1. This action arises under Title 42 of the U. S. Code Sections 1983, 1985 and 1986 and the United States Constitution.

2. The jurisdiction of this court is based upon Title 28, U. S. Code, Sections 1331 and 1343 of the United States Constitution.

3. This is a civil action wherein the matter in controversy exceeds the sum and value of $10,000.00, exclusive of interest and costs.

4. At all times herein mentioned, Plaintiffs and Defendants were and now are citizens of the United States and residents of the County of Los Angeles, State of California.

5. At all times herein mentioned, Defendants DOE CRUPI, DOE HILLS, DOE SANDOVAL and DOE LLOYD (sometimes referred to hereafter as "Defendant Officers") were, and now are, duly appointed police officers of the

Los Angeles Police Department and employees of the City of Los Angeles.

6. At all times herein mentioned Defendants were acting or pretending to act under color of one or more statutes, regulations, customs or usages of the State of California.

7. On or about October 6, 1976, at about 2:00 a.m. Defendant Officers were working in the course and scope of their employment in the City of Los Angeles.

8. At or about that same time at or near the intersection of Eleventh Avenue and Fifty-Fourth Street, said Defendant Officers, without provocation, legal justification or excuse, and by use of excessive force and negligent employment of known dangerous techniques did seize, assault, batter and, while he was handcuffed, choke and strangle Plaintiff into unconsciousness.

9. As a direct consequence of the acts above complained of, Plaintiff suffered severe pain, anguish, fear for his life and permanent physical injuries, all to his damage in an amount in excess of $10,000.00 but otherwise presently undetermined. When such amount is determined, Plaintiff will ask leave to amend this complaint to insert said amounts at this point.

10. Because of the above recited acts, Plaintiff was subjected to the deprivation by Defendant Officers under color of law and of statutes, ordinances, regulations, custom and usage of the State of California, of rights, privileges, and immunities secured to him by the Constitution and laws of the United States and particularly (a) his right to be secure in his person against unreasonable seizure; (b) his right to be free from infliction of cruel and unusual punishment guaranteed by the Eighth Amendment to said Constitution; and (c) his right not to be deprived of life, liberty or property without due process of law guaranteed by the Fifth and

Fourteenth Amendments to said Constitution and his right to freedom from prior restraint upon freedom of speech guaranteed by the First Amendment to said Constitution.

11. Defendants herein acted wilfully, maliciously, intentionally, oppressively and in reckless disregard of the possible results of their conduct, and accordingly, Plaintiff is entitled to punitive and exemplary damages for the sake of example and by way of punishing Defendants in the amount of $1,000,000.00.

12. Defendants herein and their attorneys have consistently failed and refused to respond to Plaintiff's inquiries regarding this matter, have acted in bad faith, vexatiously and for oppressive reasons and accordingly, Plaintiff is entitled to an award of reasonable attorneys fees.

## COUNT II
## AGAINST DEFENDANT CITY OF LOS ANGELES FOR VIOLATION OF CONSTITUTIONALLY PROTECTED RIGHTS.

Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint, excepting paragraph 10, and incorporates them herein by reference.

13. At all times herein mentioned, the Defendant Officers were employees and agents of the Defendant City of Los Angeles, acting within the scope and course of aforesaid employment, and by virtue of that relationship, Defendant City is liable for the acts of said Defendant Officers.

14. Because of the above recited acts, Plaintiff was deprived by Defendant City of rights, privileges and immunities secured to him by the Constitution of the United States and particularly

(a) his right to be secure in his person against unreasonable seizure guaranteed by the Fourth Amendment to said Constitution;

(b) his right to freedom from infliction of cruel and unusual punishment guaranteed by the Eighth Amendment to said Constitution;

(c) his right not to be deprived of life, liberty or property without due process of law guaranteed by the Fifth and Fourteenth Amendments to said Constitution and his right to be free of prior restraint upon his freedom of speech as guaranteed by the First Amendment to said Constitution.

COUNT III

Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint, excepting paragraph 10, and incorporates them herein by reference.

15. By virtue of the foregoing, two or more of the Defendants, whose names are presently unknown to Plaintiffs, conspired for the purpose of depriving, directly and indirectly, Plaintiff of the equal protection of the laws and of equal privileges and immunities under the law. One or more of such Defendants engaged in such conspiracy did or caused to be done, acts in furtherance of the object of the conspiracy, whereby Plaintiff was injured in his person and property and was deprived of having and exercising rights and privileges of citizens of the United States.

16. When the true names of the Defendants above responsible become known to Plaintiff, Plaintiff will ask leave of court to amend this complaint to insert their true names.

COUNT IV

Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint, excepting paragraphs 10 and 15, and incorporates them herein by reference.

17. By virtue of the foregoing, certain of the Defendants whose names are presently unknown to Plaintiff had knowledge of the wrongs conspired to be done and that they were

about to be committed. Said Defendants then had power to prevent or aid in preventing the commission of samd [*sic*] but neglected or refused so to do. Said Defendants by reasonable diligence could have prevented the damages caused by the foregoing wrongful acts which resulted in the injuries to Plaintiff.

## COUNT V
## FOR PRELIMINARY AND PERMANENT INJUNCTION AGAINST DEFENDANT CITY OF LOS ANGELES AGAINST USE OF CONTROLS RESULTING IN DEPRIVATION OF CIVIL RIGHTS

Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint, excepting paragraphs 10 and 15, and incorporates them herein by reference.

18. The "Bar Arm Control" is a means of either physical defense or offense which is applied by a right handed man as follows: You stand behind your victim. Place your right arm around his neck, positioning your forearm directly in front of and against the victim's adams [*sic*] apple. Grasp your right fist with your left hand and pull backwards with your right forearm and left hand. This hold is designed to cut-off the victim's air supply and to render him unconscious.

19. The "Carotid Artery Control" is a means of either physical defense or offense which is applied by a right handed man as follows: You stand behing [*sic*] your victim. Place your right arm around his neck positioning the inside of your right elbow directly in front of and against the victim's adam's apple. Grasp your right fist with your left hand, press your right fist inward towards the victim's neck and tighten and close your right arm. This hold is designed to cut-off the victim's blood supply to his brain and to render him unconscious.

20. Defendant City of Los Angeles has in the past and now does authorize, train and encourage its police officers to employ so-called "carotid artery" and "bar arm" controls in situations where they are threatened by far less than deadly force.

21. On or about October 6, 1976 at about 2:00 a.m., Plaintiff was stopped by the Defendant Officers for a mere traffic or vehicle code violation. Plaintiff offered no resistance or threat whatsoever, but without any provocation or justification, one of more of said officers seized Plaintiff, applied one or both of the foregoing controls, choking and strangling Plaintiff into unconsciousness, causing him to fear for his life, infringing his right to freedom of speech, and causing severe damage to Plaintiff's larynx.

22. Plaintiff is informed and believes and on such ground alleges that the Defendant Officers, pursuant to the authorization, instruction and encouragement of Defendant City of Los Angeles, regularly and routinely apply these choke holds in innumerable situations where they are not threatened by the use of any deadly force whatsoever.

23. Plaintiff is informed and believes and on such ground alleges that within five years last past, the application of such choke holds by Los Angeles Police officers, in situations involving threats of less then deadly force, has resulted in severe and permanent injuries to numerous persons and death to many others. Death resulted in at least two such cases: Booker T. Ford, Jr., on November 4, 1975; Edward Dailey, on October 6, 1976.

24. Plaintiff is informed and believes and on such ground alleges that application of the Bar Arm Control and Carotid Artery Control constitutes the use of deadly force and threatens the victim thereof with immediate severe bod-

ily harm and death and invariably constitutes an illegal prior restraint on the victim's right to freedom of speech.

25. Defendant City, by authorizing, instructing and encouraging the use of the foregoing holds, when less than deadly force is threatened, is illegally threatening to deprive Plaintiff and others similarly situated, under color of law and of statutes, ordinances, regulations, customs and usages of the State of California, of

(a) their right to be secure in their persons against unreasonable seizure;

(b) their right to be free from infliction of cruel and unusual punishment;

(c) their right not to be deprived of life, liberty or property without due process of law; and

(d) their right to be free from prior restraint of freedom of speech;

all as guaranteed and secured to them by the Constitution and laws of the United States.

26. The illegal actions of Defendant City of Los Angeles have caused Plaintiff to suffer irreparable injury and threaten to cause Plaintiff, and others similarly situated, irreparable injury, to wit, prior restraint on speech, permanent physical injury and loss of life. Plaintiff justifiably fears that any contact he has with Los Angeles Police officers may result in his being choked and strangled to death without provocation, justification or other legal excuse.

27. Unless this Court grants the relief requested, there exists no other adequate remedy at law or otherwise to protect Plaintiff, and others similarly situated, from the threatened irreparable injury.

28. No injury could result on the City of Los Angeles or its officers through the Court's restraining and enjoining the illegal actions aforesaid.

## COUNT VI
## DECLARATORY RELIEF

Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint, excepting paragraphs 10 and 15, and incorporates them herein by reference.

29. This is a claim for declaratory judgment pursuant to 28 U.S.C. §2201 for the purpose of determining an actual, justifiable [*sic*] controversy that exists between Plaintiff and Defendant City of Los Angeles as appears hereinafter.

30. Plaintiff claims and Defendant City of Los Angeles, upon information and belief, denies that the use under color of law of either the Bar Arm Control or the Carotid Artery Control, absent the threat of immediate use of deadly force, is a *per se* violation of the following Constitutional rights:

(a) the right to be secure in one's person against unreasonable seizure;

(b) the right to be free from infliction of cruel and unusual punishment;

(c) the right not to be deprived of life, liberty or property without due process of law;

(d) the right to be free of prior restraint of freedom of speech.

31. Plaintiff is entitled to a speedy hearing of this Count VI and is entitled to have it advanced on a calendar for hearing.

## COUNT VII
## DECLARATORY RELIEF AGAINST CITY OF LOS ANGELES

Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint, excepting paragraphs 10 and 15, and incorporates them herein by reference.

32. This is a claim for declaratory judgment pursuant to 28 U.S.C. §2201 for the purpose of determining an actual, justiciable controversy between Plaintiff and Defendant City of Los Angeles as appears hereinafter.

33. Plaintiff claims and Defendant City of Los Angeles, upon Plaintiff's information and belief, denies that the Los Angeles City Attorney cannot discharge his duties as public prosecutor while serving as the City's civil attorney without depriving Plaintiff and others similarly situated of their Constitutional right not to be deprived of life, liberty or property without due process of law and their Constitutional right to equal protection of the law.

34. Plaintiff claims, and Defendant City of Los Angeles, upon Plaintiff's information and belief, denies that by virtue of the foregoing, the provisions of Los Angeles City Administrative Code §20.26 authorizing the City Attorney to prosecute misdemeanors is unconstitutional.

35. The Los Angeles City Administrative Code §20.26 provides that

> "Whenever it shall be authorized by the laws of this State, the City Attorney *shall* prosecute any and all misdemeanor offenses arising from violation of the laws of the State. . ."

A copy of this Section is attached hereto, marked Exhibit A, and incorporated herein by reference.

36. The required State authority has been given. California Government Code §41803.5 provides that the City Attorney of any municipality may prosecute misdemeanor violations committed within the municipality arising out of violations of state laws when the District Attorney of the county consents to such prosecution.

37. That consent has been given by the Los Angeles County District Attorney. Copies of the letters delegating

the responsibility are attached hereto, marked Exhibit B, and incorporated herein by reference.

38. The Los Angeles City Attorney is widely known and reputed to be the sole prosecutor of misdemeanors in the City of Los Angeles.

39. By virtue of the aforementioned laws and regulations, Plaintiff and other citizens reasonably believe that complaints of misdemeanor criminal conduct should be and they regularly are directed to the Los Angeles City Attorney, City of Los Angeles, or its sworn police personnel.

40. On 18 October, 1976, Plaintiff wrote a letter to the Los Angeles City Attorney, in such attorney's capacity as public prosecutor, complaining that the arresting officers in the above incident had committed criminal assaults and batteries against Plaintiff. Plaintiff requested the Los Angeles City Attorney as public prosecutor to investigate his complaint and to initiate a prosecution if warranted. Plaintiff also informed the Los Angeles City Attorney of his intention to file a lawsuit against the City. The Los Angeles City Attorney as public prosecutor failed and refused and continues to fail and refuse to conduct any investigation whatsoever. A copy of that letter, marked Exhibit C, is attached hereto and incorporated herein by reference.

41. Instead, upon receiving notice in the 18 October letter of Plaintiff's civil claims against his client, the City of Los Angeles, the Los Angeles City Attorney formed the opinion that it was his duty to and did immediately commence an investigation in his civil capacity in anticipation of litigation against the City. Accordingly, the City claims that all evidence gathered in such investigation is privileged as attorney work-product and as confidential information communicated by Defendant City or its employees to its attorney, the Los Angeles City Attorney. Therefore, unless

the Los Angeles City Attorney receives the permission of his client to waive the privilege, he is precluded by law from publicly filing a criminal complaint or prosecuting any criminal proceeding by disclosure of the results of an investigation he has conducted or initiated in his civil capacity. California Business and Professions Code §6068(e) provides that it is the duty of an attorney to "maintain inviolate the confidence, and at every peril to himself to preserve the secrets, of his client." In criminal proceedings, the Court may and often does order the prosecutor to disclose evidence of investigations to the defendant.

42. In addition, the ability of the City of Los Angeles to control the conduct of the public prosecutor by refusing or granting a waiver of the privilege is an improper and unlawful restraint on the power and authority of the public prosecutor.

43. By virtue of the foregoing, Plaintiff has been and is being deprived of his Constitutional guarantee of equal protection of the laws. The law protects or should protect, by the deterrent threat of criminal prosecution, persons who complain to the public prosecutor that they have been assaulted and battered. But if the assault and battery was committed by a Los Angeles Police officer, the law does not provide protection for Plaintiff or any other victims because the Los Angeles City Attorney as public prosecutor is precluded, absent consent from the City of Los Angeles, by law from prosecuting. Accordingly, all members of the Los Angeles Police Department, but no other persons, are effectively free to commit misdemeanor crimes against Plaintiff and all other persons in the City of Los Angeles when such actions are made known to the City Attorney and when such actions threaten the City with civil liability.

44. By virtue of the foregoing, Plaintiff is entitled to a judicial declaration that insofar as Los Angeles City Ad-

ministrative Code purports to authorize the City Attorney to prosecute misdemeanors, it is void because it deprives Plaintiff and other persons of equal protection of the law in violation of the Fourteenth Amendment to the U. S. Constitution.

45. In the event that the Court does declare §20.26 unconstitutional, the Court should consider ordering the City to give widespread publicity to this matter. Otherwise, unsuspecting citizens are likely to continue to lodge their complaints with the Los Angeles City Attorney, the City of Los Angeles and its sworn police officers whereupon all further action upon them may be precluded by the privileges claimed by the City and its attorney.

46. Plaintiff is entitled to a speedy hearing of this Count VII and is entitled to have it advanced on calendar for hearing.

WHEREFORE, Plaintiff prays for relief from Defendants, and each of them, jointly and severally, as follows:

COUNTS I THROUGH IV

1. The sum of One Million Dollars ($1,000,000.00) in general damages.
2. The sum of One Million Dollars ($1,000,000.00) in punitive and exemplary damages.
3. Costs of suit and reasonable attorneys fees.
4. Such other and further relief as the Court deems just and proper.

COUNT V

1. That Defendant City of Los Angeles and its officers, agents, representatives and employees be restrained and enjoined pendente lite and permanently from
   (a) authorizing, instructing, encouraging the use of or applying the Bar Arm Control,

(b) authorizing, instructing, encouraging or applying the Carotid Artery Control,

except in situations where the proposed victim of said control reasonably appears to be threatening the immediate use of deadly force.

2. Costs of suit and reasonable attorneys fees.
3. Such other and further relief as the Court deems just and proper.

COUNT VI

1. To adjudge order and decree that the use under color of law of either the Bar Arm Control or the Carotid Artery Control, absent the threat of immediate use of deadly force, is a *per se* violation of the following Constitutional rights:
   (a) the right to be secure in one's person against unreasonable seizure;
   (b) the right to be free from infliction of cruel and unusual punishment;
   (c) the right not to be deprived of life, liberty or property without due process of law;
   (d) the right to be free of prior restraint of freedom of speech.
2. Costs of suit and reasonable attorneys fees.
3. Such other and further relief as the Court deems just and proper.

COUNT VII

1. To adjudge, order and decree that insofar as Los Angeles City Administrative Code $20.26 [*sic*] purports to authorize the Los Angeles City Attorney to prosecute misdemeanor crimes, it is void because it deprives Plaintiff and other persons of equal protection of the law in violation of the Fourteenth Amendment.
2. For costs and reasonable attorneys fees.

3. For such other and further relief as the Court deems just and proper.

Dated: January 31, 1977.

MICHAEL R. MITCHELL
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff herein demands trial by jury of all issues of fact properly triable thereby.

MICHAEL R. MITCHELL
Attorney for Plaintiff

(Declaration of Service by Mail omitted in printing).

## AFFIDAVIT OF ADOLPH LYONS

State of California, County of Los Angeles —

I, the undersigned, being duly sworn, hereby depose and say:

1. My name is ADOLPH LYONS; I am the Plaintiff in the above entitled action.

2. I have read the foregoing COMPLAINT FOR DAMAGES, CIVIL RIGHTS; PRELIMINARY AND PERMANENT INJUNCTION; DECLARATORY RELIEF and know the contents thereof and that the same is true to my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this affidavit is executed this 31st day of January, 1977 at Los Angeles, California.

/s/ Adolph Lyons
ADOLPH LYONS

SUBSCRIBED and SWORN to before me
this 31st day of January, 1977.

/s/ Kathleen J. Dakovich
KATHLEEN J. DAKOVICH
Notary Public in and for said State.

(Non-relevant attachments omitted in printing).

**Order Granting Partial Judgment on the Pleadings in Favor of Defendant City of Los Angeles and Denying Sanctions.**

United States District Court Central District of California.

(Title omitted in printing).

No. 77-0420-RMT.

This cause came on to be heard May 9, 1977 on Defendant's motion for partial judgment on the pleadings, and it appearing to the satisfaction of the Court that Defendant is entitled to partial judgment for the reasons set forth in Defendant's Motion and Reply Memoradum in support of partial judgment on the pleadings,

IT IS HEREBY ORDERED:

1. That Judgment in favor of the City be entered with respect to plaintiff's claims under the First and Eighth Amendments to the United States Constitution alleged in Count II of the complaint.

2. That judgment in favor of the City be entered with respect to Counts V, VI, and VII of the complaint.

3. That requests of the City and of the plaintiff for sanctions are denied.

DATED: May 12, 1977

ROBERT M. TAKASUGI
UNITED STATES DISTRICT JUDGE

(Proof of service by mail omitted in printing.)

**First Amended Complaint for Damages; Civil Rights; Preliminary and Permanent Injunctions; Declaratory Relief. Demand for Jury Trial.**

United States District Court Central District of California.

(Title omitted in printing).

Case No. 77-0420-RMT.

Plaintiff alleges the following upon information and belief, except paragraphs 8, 9, 21 and 26, which are alleged upon knowledge.

COUNT I

AGAINST DEFENDANTS ROBERT J. CRUPI, DANIEL HILLS, SCOTT LANDSMAN AND HAROLD GAINES ONLY

1. This action arises under Title 42 of the U.S. Code Sections 1983, 1985 and 1986 and the United States Constitution.

2. The jurisdiction of this court is based upon Title 28, U.S. Code Sections 1331 and 1343 of the U.S. Constitution.

3. This is a civil action wherein the matter in controversy exceeds the sum and value of $10,000.00, exclusive of interest and costs.

4. At all times herein mentioned, Plaintiffs and Defendants were and now are citizens of the United States and residents of the County of Los Angeles, State of California.

5. At all times herein mentioned, Defendants Robert J. Crupi, Daniel Hills, Scott Landsman and Harold Gaines (sometimes referred to hereafter as "Defendant Officers") were, and now are, duly appointed police officers of the Los Angeles Police Department and employees of the City of Los Angeles.

6. At all times herein mentioned Defendants were acting or pretending to act under color of one or more statutes, regulations, customs or usages of the State of California.

7. On or about October 6, 1976, at about 2:00 a.m. Defendant Officers were working in the course and scope of their employment in the City of Los Angeles.

8. At or about that same time at or near the intersection of Eleventh Avenue and Fifty-Fourth Street, said Defendant Officers, without provocation, legal justification or excuse, and by use of excessive force and negligent employment of known dangerous techniques did seize, assault, batter and, while he was handcuffed, choke and strangle Plaintiff, a black male person, into unconsciousness.

9. As a direct consequence of the acts above complained of, Plaintiff suffered severe pain, anguish, fear for his life and permanent physical injuries, all to his damage in an amount in excess of $10,000.00 but otherwise persently [*sic*] undetermined. When such amount is determined, Plaintiff will ask leave to amend this complaint to insert said amounts at this point.

10. Because of the above recited acts, Plaintiff was subjected to the deprivation by Defendant Officers under color of law and of statutes, ordinances, regulations, customs and usage of the State of California, of rights, privileges, and immunities secured to him by the Constitution and laws of the United States and particularly (a) his right to be secure in his person against unreasonable seizure; (b) his right to be free from infliction of cruel and unusual punishment guaranteed by the Eighth Amendment to said Constitution; and (c) his right not to be deprived of life, liberty or property without due process of law guaranteed by the Fifth and Fourteenth Amendments to said Consti-

tution and (d) his right, as a black resident of Los Angeles to equal protection of the law.

11. Defendants herein acted wilfully, maliciously, intentionally, oppressively and in reckless disregard of the possible results of their conduct, and accordingly, Plaintiff is entitled to punitive and exemplary damages for the sake of example and by way of punishing Defendants in the amount of $1,000,000.00.

12. Defendants herein and their attorneys have consistently failed and refused to respond to Plaintiff's inquiries regarding this matter, have acted in bad faith, vexatiously and for oppressive reasons and accordingly, Plaintiff is entitled to an award of reasonable attorneys fees.

## COUNT II
## AGAINST DEFENDANT CITY OF LOS ANGELES FOR VIOLATION OF CONSTITUTIONALLY PROTECTED RIGHTS

Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint, excepting paragraph 10, and incorporates them herein by reference.

13. At all times herein mentioned, the Defendant Officers were employees and agents of the Defendant City of Los Angeles, acting within the scope and course of aforesaid employment, and by virtue of that relationship, Defendant City is liable for the acts of said Defendant Officers. The Defendant Officers were carrying out the official policies, customs and practices of the Los Angeles Police Department and the City of Los Angeles, and by virtue thereof, defendant City is liable for the actions.

14. Because of the above recited acts, Plaintiff was deprived by Defendant City of rights, privileges, and immunities secured to him by the Constitution of the U.S. and particularly:

(a) his right to be secure in his person against unreasonable seizure guaranteed by the Fourth Amendment to said Constitution.

(b) his right to freedom from infliction of cruel and unusual punishment guaranteed by the Eighth Amendment to said Constitution.

(c) his right not to be deprived of life, liberty or property without due process of law guaranteed by the Fifth and Fourteenth Amendments to said Constitution and

(d) his right as a black resident of Los Angeles to equal protection of the law.

COUNT III

Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint, excepting paragraph 10, and incorporates them herein by reference.

15. By virtue of the foregoing, two or more of the Defendants, whose names are presently unknown to Plaintiffs, conspired for the purpose of depriving, directly and indirectly, Plaintiff of the equal protection of the laws and of equal privileges and immunities under the law. One or more of such Defendants engaged in such conspiracy did or caused to be done, acts in furtherance of the object of the conspiracy, whereby Plaintiff was injured in his person and property and was deprived of having and exercising rights and privileges of citizens of the United States.

16. When the true names of the Defendants above responsible become known to Plaintiff, Plaintiff will ask leave of court to amend this complaint to insert their true names.

COUNT IV

Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint, excepting paragraphs 10 and 15, and incorporates them herein by reference.

17. By virtue of the foregoing, certain of the Defendants whose names are presently unknown to Plaintiff had knowledge of the wrongs conspired to be done and that they were about to be committed. Said Defendants then had power to prevent or aid in preventing the commission of samd [*sic*] but neglected or refused so to do. Said Defendants by reasonable diligence could have prevented the damages caused by the foregoing wrongful acts which resulted in the injuries to Plaintiff.

## COUNT V
## FOR PRELIMINARY AND PERMANENT INJUNCTION AGAINST DEFENDANT CITY OF LOS ANGELES AGAINST USE OF CONTROLS RESULTING IN DEPRIVATION OF CIVIL RIGHTS.

Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint, excepting paragraphs 10 and 15, and incorporates them herein by reference.

18. The "Bar Arm Control" is a means of either physical defense or offense which is applied by a right handed man as follows: You stand behind your victim. Place your right arm around his neck, positioning your forearm directly in front of and against the victim's adams [*sic*] apple. Grasp your right fist with your left hand and pull backwards with your right forearm and left hand. This hold is designed to cut-off the victim's air supply and to render him unconscious.

19. The "Carotid Artery Control" is a means of either physical defense or offense which is applied by a right handed man as follows: You stand behing [*sic*] your victim. Place your right arm around his neck positioning the inside of your right elbow directly in front of and against the victim's adam's apple. Grasp your right fist with your left hand, press your right fist inward towards the victim's neck

and tighten and close your right arm. This hold is designed to cut-off the victim's blood supply to his brain and to render him unconscious.

20. Defendant City of Los Angeles has in the past and now does authorize, train and encourage its police officers to employ so-called "carotid artery" and "bar arm" controls in situations where they are threatened by far less than deadly force.

21. On or about October 6, 1976 at about 2:00 a.m., Plaintiff was stopped by the Defendant Officers for a mere traffic or vehicle code violation. Plaintiff offered no resistance or threat whatsoever, but without any provocation or justification, one of [*sic*] more of said officers seized Plaintiff, applied one or both of the foregoing controls, choking and strangling Plaintiff into unconsciousness, causing him to fear for his life, and causing severe damage to Plaintiff's larynx.

22. Plaintiff is informed and believes and on such ground alleges that the Defendant officers, pursuant to the authorization, instruction and encouragement of Defendant City of Los Angeles, regularly and routinely apply these choke holds in innumerable situations where they are not threatened by the use of any deadly force whatsoever.

23. Plaintiff is informed and believes and on such ground alleges that within five years last past, the application of such choke holds by Los Angeles police officers, in situations involving threats of less than deadly force, has resulted in severe and permanent injuries to numerous persons and death to many others, and particularly and discriminatorily the strangleholds are applied to black males. Plaintiff is a black male, age 28, born November 3, 1951. Plaintiff is informed and believes and on such grounds alleges that since at least May, 1975, the application of such

stranglehold by Los Angeles City officers has resulted in at least ten deaths as follows:

| | |
|---|---|
| May 27, 1975 | Carl Middleton, 25-year-old black male |
| August 10, 1975 | Frank Fairbanks, 21-year-old Caucasian male; |
| Nov. 4, 1975 | Booker T. Ford, Jr., 28-year-old black male; |
| Oct. 6, 1976 | Edward Dailey, 19-year-old black male; |
| July 24, 1978 | David Adkins, 39-year-old black male; |
| Feb. 1, 1978 | Alvin Whitehead, 34-year-old black male; |
| Sep. 1, 1979 | Chadwick Turk, 30-year-old black male |
| Jan. 7, 1980 | Robert Cameron, 32-year-old Caucasian male; |
| Mar. 7, 1980 | James Wright, 41-year-old black male; |
| June, 1980 | Larry Morris, -year-old black male |

Eight of ten people strangled to death were black (80%) and two were white (20%). During this time period, the population of the City of Los Angeles was approximately 18% black. Blacks accounted for 36% of total arrests, 46% of arrests for serious felones [*sic*] (murder, forcible rape, robbery, and aggrevated assault), and 44% of unarmed attacks on police officers.

24. Plaintiff is informed and believes and on such ground alleges that application of the Bar Arm Control and Carotid Artery Control constitutes the use of deadly force and threatens the victim thereof with immediate severe bodily harm and death and further constitutes a denial of equal

protection of the law and due process to black males of Los Angeles.

25. Defendant City, by authorizing, instructing and encouraging the use of the foregoing holds, when less than deadly force is threatened, is illegally threatening to deprive Plaintiff and others similarly situated under color of law and of statutes, ordinances, regulations, customs and usages of the State of California and City of Los Angeles;

(a) their right to be secure in their persons against unreasonable seizure;

(b) their right to be free from infliction of cruel and unusual punishment;

(c) their right not to be deprived of life, liberty or property without due process of law; and

(d) their rights, as black residents of Los Angeles to equal protection of the law, all as guaranteed and secured to them by the Constitution and laws of the United States.

26. The illegal actions of Defendant City of Los Angeles have caused Plaintiff to suffer irreparable injury and threaten to cause Plaintiff and others similarly situated irreparable injury, to wit, permanent physical injury and loss of life. Plaintiff justifiably fears that any contact he has with Los Angeles police officers may result in his being choked and strangled to death without provocation, justification or other legal excuse.

27. Unless this Court grants the relief requested, there exists no other adequate remedy at law or otherwise to protect Plaintiff, and others similarly situated, from the threatened irreparable injury.

28. No injury could result on the City of Los Angeles or its officers through the Court's restraining and enjoining the illegal actions aforesaid.

## COUNT VI
## DECLARATORY RELIEF

Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint, excepting paragraphs 10 and 15, and incorporates them herein by reference.

29. This is a claim for declaratory judgment pursuant to 28 U.S.C. §2201 for the purpose of determining an actual, justifiable [*sic*] controversy that exists between Plaintiff and Defendant City of Los Angeles as appears hereinafter.

30. Plaintiff claims and Defendant City of Los Angeles, upon information and belief, denies that the use under color of law of either the Bar Arm Control or the Carotid Artery Control, absent the threat of immediate use of deadly force, is a *per se* violation of the following Constitutional rights:

(a) the right to be secure in one's person against unreasonable seizure;

(b) the right to be free from infliction of cruel and unusual punishment;

(c) the right not to be deprived of life, liberty or property without due process of law;

(d) their rights, as black residents of Los Angeles, to equal protection of the law all as guaranteed and secured to them by the Constitution and laws of the United States.

31. Plaintiff is entitled to a speedy hearing of this Count VI and is entitled to have it advanced on a calendar for hearing.

WHEREFORE, Plaintiff prays for relief from Defendants, and each of them, jointly and severally, as follows:

### COUNTS I THROUGH IV

1. The sum of One Million Dollars ($1,000,000.00) in general damages.

2. The sum of One Million Dollars ($1,000,000.00) in punitive and exemplary damages.
3. Costs of suit and reasonable attorneys fees.
4. Such other and further relief as the Court deems just and proper.

COUNT V

1. That Defendant City of Los Angeles and its officers, agents, representatives and employees be restrained and enjoined pendente lite and permanently from
   (a) authorizing, instructing, encouraging the use of or applying the Bar Arm Control,
   (b) authorizing, instructing, encouraging or applying the Carotid Artery Control,

   except in situations where the proposed victim of said control reasonably appears to be threatening the immediate use of deadly force.
2. Costs of suit and reasonable attorneys fees.
3. Such other and further relief as the Court deems just and proper.

COUNT VI

1. To adjudge order and decree that the use under color of law of either the Bar Arm Control or the Carotid Artery Control, absent the threat of immediate use of deadly force, is a *per se* violation of the following Constitutional rights:
   (a) the right to be secure in one's person against unreasonable seizure;
   (b) the right to be free from infliction of cruel and unusual punishment;
   (c) the right not to be deprived of life, liberty or property without due process of law;
   (d) the rights of black residents of Los Angeles to equal protection of the law;

all as guaranteed and secured to them by the Constitution and laws of the United States.

2. Costs of suit and reasonable attorney's fees;
3. Such other and further relief as the Court deems just and proper.

MICHAEL R. MITCHELL
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff herein demands trial by jury of all issues of fact properly triable thereby.

MICHAEL R. MITCHELL
Attorney for Plaintiff

(Proof of service by mail omitted in printing.)

**Excerpts From the Deposition of Adolph George Lyons. June 9, 1977 (Exhibit 1).**

* * *

(Page 60, lines 16-28):

Q: Has any doctor ever indicated to you that you did or did not have internal injuries of any sort?

A: Yes.

Q: Who was that doctor?

A: Dr. Bowers.

Q: What did he tell you?

A: He told me my larynx was bleeding.

Q: All right. Is there any other problem that you have today that you didn't have before the incident which you attribute to the incident, whether it be physical, mental, emotional, anything like that?

A: Emotionally.

Q: Could you describe that?

(Page 61, lines 1-2):

A: It is just whenever I see a black-and-white unit I get extremely apprehensive and nervous.

**Selected Interrogatories and Responses from *Janet Denise Wagner, et al vs. City of Los Angeles, et al* (Superior Court of California, County of Los Angeles, No. CA 000488) (Exhibit 29).**

*INTERROGATORY NO. 81:*

State whether you claim that, if the relief demanded by plaintiffs herein were granted, injuries to Los Angeles police officers would increase, and if so, state each and every fact and opinion, identifying the source thereof:

A. By name and address if an individual; or

B. By date, title and a summary of its contents, if a document, upon which you base such claim.

*RESPONSE TO INTERROGATORY NO. 81:*

Generally, the Department believes that elimination of the holds in question would probably increase the likelihood of injuries to officers in some situations and would probably decrease such likelihood in other situations.

To ascertain the effect on officer injuries if unconscious rendering holds were eliminated, a survey was conducted of experienced officers currently assigned to the Police Academey [*sic*]. These were Lieutenant D. Benton, Officer K. Beno, Officer B. Jarvis, and Officer J. Myers.

Some officers believed that elimination of these holds would reduce the probability of injury to officers since the majority of officer injuries occur when officers are forced to use hand-to-hand or wrestling techniques against suspects (*e.g.*, bar-arm and carotid control holds). Without these techniques, officers would escalate to the baton or kicks to subdue a combative suspect — thereby disabling the suspect or ending the confrontation without having to physically "tie up" with the suspect.

Other officers expressed a contrary view. They believe if officers were forced to escalate to the baton or kicks, the suspect would respond by elevating his or her level of force (*e.g.*, the use of club, stick, or knife). Such escalation would clearly increase the risk of injury to officers and, significantly, may create additional situations where officers would be justified in using deadly force.

The Department does not presently have data incating [*sic*] whether elimination of the unconscious rendering holds would increase or decrease the probablity of injuries to officer. The Department suspects, based on the above, that elimination of such holds might reduce the frequency of minor injuries to officers and increase the frequency of major injuries to officers. The Department believes that the precise effect the absence of such holds would have depends upon a number of variables at work in a combative or potentially combative confrontation between an officer and a suspect.

*INTERROGATORY NO. 82:*

State whether you claim that, if the relief demanded by plaintiffs herein were granted, injuries to civilians or arrestees would increase, and, if so, state each and every fact and opinion, identifying the source thereof:

A. By name and address if an individual; or

B. By date, title and a summary of its contents, if a document, upon which you base such claim.

*RESPONSE TO INTERROGATORY NO. 82:*

The Department does claim that if the court were to grant the injunctions sought by the plaintiffs, injuries to suspects would increase.

The Department's altercation report reflect a much higher suspect injury rate in incidents where a baton is utilized as compared to altercations involving application of an un-

conscious rendering hold. The data tabulated for November 13, 1978 through February 13, 1979 so indicate. See Exhibit 5 hereto, page 1. In addition, the severity of injury dramatically increases when one moves from the control holds to the baton or kicks.

The Department's claim is also based upon its philosophy of using only the minimum degree of force necessary to subdue a suspect. Abandonment of the holds in question would run contrary to such philosophy. Additional bases for the Department's position include, but are not limited to, the following:

a. Declaration of Richard A. Le Garra (Defendant's Memorandum 22 *et seq.*, including exhibits thereto).

b. Declaration of Thrift G. Hanks, M.D. (Defendant's Memorandum 156-157).

**Los Angeles Police Department Training Bulletins: Vol. IV, Issue 16, July 31, 1972, "Control Holds - Part I" and Vol. IV, Issue 17, July 31, 1972, "Control Holds - Part II" (Exhibit 49).**

[Letterhead]

TRAINING BULLETIN

*Vol. IV, Issue 16* *July 31, 1972*

CONTROL HOLDS
Part I

From year to year, the number of policemen injured in altercations steadily increases. The advantages afforded by the use of the control holds taught at the Academy will help reduce the number of injuries to officers. While reading through the description of the holds, remember that policemen do not have an unlimited license to use these control holds. Officers should use them only when the situation necessitates such force.

In combative situations, a primary concern is the safety of police officers. However, officers must also be concerned with the suspect's well being. In applying these holds, utilize only the amount of force which is necessary to control the suspect. By doing this, officers will be affording themselves maximum safety while subjecting the suspect to the minimum possibility of being injured. Remember, these are CONTROL HOLDS. Under no circumstances shall a control hold or other form of physical force be employed to prevent an individual from intentionally swallowing anything placed in his mouth.

In April of 1970, the Chief of Police appointed a committee comprised of three [*illegible*] captains and a specialist in orthopedic surgery to study the various control holds being taught at the [*illegible*] Academy. After witnessing the application of these holds, and researching other means

of control seized by various law enforcement agencies, the committee found that when properly used, these holds would provide maximum safety for the officer while ensuring minimum risk of injury to the suspect.

The following is a comprehensive description of the control holds currently taught at the Police Academy. The techniques are described as a right-handed officer would perform the holds. If a left-handed officer was performing the holds, the procedure would be reversed.

The Bar Arm Control

The bar arm control, when properly used, will afford you complete control over the suspect. When pressure is applied to the suspect's trachea (windpipe), it stops the flow of oxygen to the brain and causes unconsciousness.

This hold is started while facing the suspect. Your first move is to assume the advantage "left" or "right" position. From the advantage "left" position, your next move is a continuous one:

- Place you right fist firmly against the suspect's left shoulder. At the same time, move your body in a clockwise direction to the rear of the suspect, and place left foot directly behind the suspect's left foot. (See Photo No. 1)

1

- Place your right forearm across the front of the suspect's neck. Pull the suspect back until he is off balance with his weight on his heels. As you're pulling back with your right arm, strike the suspect's lower back with your left forearm in a football-style thrust. This will assist you in bringing the suspect off balance.

  When the suspect is off balance, his head should be resting on your right shoulder.
- Drop your right leg back and pull the suspect further off balance until his back is resting across the front of your chest. (See Photo No. 2)
- Reach up with your left hand and place it on the suspect's left shoulder with your palm up. Place your right fist in your left hand and close your left hand. Place your head on the same side as your hands, pressing your head against the left side of the suspect's head—this will lock the suspect's head into a fixed position and keep him from breaking free.
- Take the suspect to the ground by rotating your right wrist clockwise and then drive him straight down. Use your right forearm as a lever to push him to the ground.

  Keep your head and hands in the same position on the left side of the suspect's head. Keep your knees as close to the suspect's buttocks as possible to prevent him from squirming around. (See Photo No. 3)
- Once you are on the ground with the suspect, apply pressure by pulling straight back into the suspect's throat. Pull your right fist and your right elbow back simultaneously. This will create a bar effect with your right forearm. (See Photo No. 4) This action will cut off the suspect's air supply and he will become unconscious. When he goes limp, stop applying pressure.
- When the suspect has stopped resisting, you can handcuff him.

NOTE: In the past, suspects have sustained contusions of the throat and similar injuries. In rare instances, death has occurred due to the fracturing of the larynx. This hold causes swelling in the throat and a blockage of air. Therefore, you must be aware that PRESSURE APPLIED TO A SUSPECT'S THROAT OVER AN EXTENDED PERIOD OF TIME IS HAZARDOUS. THE BAR ARM SHOULD BE USED AS A MEANS OF GAINING CONTROL REQUIRED TO PROGRESS INTO THE CAROTID CONTROL (see next hold.) USE OF THE CAROTID CONTROL REDUCES POSSIBILITY OF INJURY TO THE TRACHEA OR LARYNX.

[Letterhead]

TRAINING BULLETIN

*Vol. IV, Issue 17* *July 31, 1972*

## CONTROL HOLDS
### Part II

With each passing year, it has become increasingly apparent that police officers must be thoroughly trained in the art of self-defense. Today, more than ever before, situations arise where officers are compelled to physically control a combative suspect or a violent mental patient. In daily confrontations with the criminal element, officers must not only contend with the aspect of physical injury to themselves, but must also be concerned with the civil and criminal charges that may be brought against them as a result of their actions. They must be able to justify the amount of force that is used in controlling a suspect. Therefore, it behooves officers to make it their personal responsibility to learn and practice the holds which are described in these bulletins.

### Carotid Control

The carotid control hold enables you to render a suspect unconscious without applying pressure to the throat area (larynx and trachea), which is a definite hazard. The carotid arteries are located on each side of the neck. By applying pressure against these arteries, you cut off the supply of blood to the brain. Unconsciousness will usually result if this pressure is applied from fifteen to twenty seconds. When the suspect goes limp, stop applying pressure. Remember, this hold is dangerous and should be applied only on a combative person when and only when that degree of force is necessary to subdue that person.

This control hold is usually applied after the suspect has been taken to the ground with a bar arm control.

- Once in the kneeling position, release the tension in your right arm momentarily. At the same time, thrust your right arm quickly to the left forming a "V" with your elbow at the suspect's chin. With the open palm of your left hand, push the head into that formation. (See Photo No. 5) Your upper arm is against the right of the suspect's neck, and your forearm is against the left side.
- Quickly bend your right fist in a "gooseneck" fashion toward the suspect's left shoulder. Place your left hand over your right fist in a palm-over-fist manner.
- Apply pressure to the carotid artery by flexing your right bicep and pushing against your right fist with your left hand, pushing toward the suspect's neck. (See Photo No. 6)

5



6

You may turn the carotid control into a "locked carotid" by:

- Removing your left hand from your right fist and moving it quickly forward so the bottom of your left arm is resting across the top of the suspect's left shoulder.
- Place your right fist (which is kept "goosenecked") in the area on the inside of your left elbow between the forearm and bicep. (See Photo No. 7)
- Bring your left hand back behind the suspect's head and place it palm down on the rear of your right shoulder. (The back of the suspect's head will be against your left forearm) (See Photo No. 8)
- The suspect is now locked into position.
- By moving your left hand back over your shoulder, you are causing pressure to be applied to the carotid arteries on both sides of the suspect's back.

7 8

As the blood ceases to flow to the brain, the suspect will begin to go limp and then become unconscious.

NOTE: THE USE OF THE CAROTID AND LOCKED CAROTID REDUCES THE POSSIBILITY OF INJURY TO THE SUSPECT'S TRACHEA OR LARYNX. HOWEVER, THESE HOLDS CUT OFF THE SUPPLY OF BLOOD TO THE BRAIN. THEREFORE, YOU SHOULD BE AWARE OF THE CRITICAL 3-MINUTE INTERVAL, AFTER WHICH THE BRAIN CAN NO LONGER TOLERATE THE ABSENCE OF OXYGEN. DO NOT APPLY CONTINUOUS PRESSURE FOR MORE THAN 3 MINUTES — THIS COULD KILL THE SUSPECT OR CAUSE PERMANENT BRAIN DAMAGE.

**Board of Police Commissioners. Report on Policies of Los Angeles Police Department Regarding the Use of Physical Force in Subduing Suspects. September 27, 1978 (Exhibit 60).**

[Letterhead]

Los Angeles Police Department

September 27, 1978

Police, Fire and Public
Safety Committee
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

POLICIES OF LOS ANGELES POLICE DEPARTMENT REGARDING THE USE OF PHYSICAL FORCE IN SUBDUING SUSPECTS

At a regular meeting of the Board of Police Commissioners, held September 26, 1978, this Board considered and approved the attached report which responds to the recommendations of the City Council regarding the use of physical force by police officers. The report responds to recommendations one through four and is submitted in compliance with the October 10, 1978 deadline. Council File 78-477 is transmitted herewith.

BOARD OF POLICE COMMISSIONERS

WILLIAM G. COWDIN
Secretary

WGC:ce

Enc.

bcc: National Commission on Law Enforcement and Social Justice
*Councilman Farrell*
*David Margolis*

[Letterhead]

BOARD OF POLICE COMMISSIONERS

July 21, 1978

Daryl F. Gates
Chief of Police

POLICIES OF LOS ANGELES POLICE DEPARTMENT RE THE USE OF PHYSICAL FORCE IN SUBDUING SUSPECTS - COUNCIL FILE 78-477

The attached is transmitted for investigation and report in accordance with the Police, Fire and Public Safety Committee's "Amended Recommendations". (See final page of Committee report.) The Committee calls for two separate reports. Recommendation No. 2 requests a review of the Chief Legislative Analyst's report (attached) and an analysis of available medical data. Provision of all medical data reviewed is requested for the Board's information. Recommendations 3 and 4 ask for a report on progress and future plans. This second report should be submitted to the Commission no later than September 20, 1978, to ensure compliance with the 90-day Committee deadline.

/s/ Linde Buzard
LINDE BUZARD, Acting Secretary
Board of Police Commissioners

LB:ce

[Letterhead]

Intradepartmental Correspondence.

Received: September 21, 1978.

September 19, 1978 G.F. 081-78

1.2

TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: RESPONSE TO THE CITY COUNCIL'S RECOMMENDATIONS ON THE USE OF PHYSICAL FORCE

Honorable Members:

It is recommended that the Board approve this report for transmittal to the Police, Fire and Public Safety Committee and the Public Health, Human Resources and Senior Citizens Committee relative to the use of physical force by police officers. At the request of the City Council, the recommendations of the Police, Fire and Public Safety Committee pertaining to this matter have been evaluated as follows:

*RECOMMENDATIONS AND RESPONSES*

1. "That the Police Department continue its participation in research in the use of physical force to control suspects and continue to implement and improve procedures as they become available."

   Due to the inherent danger of injury to both suspects and officers in any physical confrontation, self-defense and control techniques are continually evaluated and, when appropriate, new techniques are implemented. Experts in the field of martial arts are periodically contacted regarding new self-defense techniques. To date, no suitable alternatives to the types of control holds utilized by the Department have been

found although some modifications in training have been made as a result of this research. One change, the modified carotid hold, was adopted in 1978 to provide an officer with a momentary advantage that may be sufficient to control a suspect. If the hold is not sufficient to control a combative suspect, the officer is in a position to move to several other control holds such as the carotid, chancery or bar arm. The use of the modified carotid control hold provides an officer with maximum safety while subjecting the suspect to a minimum of possible injury. Application of this control technique is currently being taught to Department personnel in the Police Academy recruit, reserve and in-service schools as well as in training sessions at the Area levels.

Relative to improved procedures, in 1978 the Department modified the procedures for restraining and transporting persons severely affected by PCP use. Use of the cord-cuff restraint device was authorized, a floor-board mounted restraint device is being tested, and procedures were developed whereby an ambulance may be utilized to transport extremely violent and uncontrollable suspects who require restraint to the extent that transportation in a recumbent position is necessary.

The cord-cuff restraint is used in conjunction with handcuffs to immobilize a violent suspect and has proven very effective in restricting a combative suspect's movements, especially while seated in the rear seat of a police vehicle. Instruction in the use of this device has also been included in appropriate training programs.

In July of 1978, limited testing began of another control device — a right rear floor-board mounted belt

device similar to that of a seat belt which is tightened around a suspect's lower leg or ankle area. This restrainer has been developed subsequent to the onset of numerous contacts with combative PCP suspects. Preliminary test results are favorable indicating that this device provides a safe, effective and humane method of transportation. Upon completion of the evaluation period, a decision will be made whether to approve the device for City-wide use.

Although still authorized, the procedures for transporting violent persons by ambulance are under review. Demands upon the Fire Department for emergency paramedic services preclude the use of ambulances for other than transportation of violent persons directly to the nearest emergency hospital. The involved police officers are then required to transport the violent person by automobile from the medical facility to a detention facility. It is anticipated, however, that should final test results of the floorboard device comport with the preliminary evaluations, transportation by ambulance will be unnecessary.

2. "That the Police Department and/or the Police Commission be requested to review the report of the Chief Legislative Analyst on the matter attached to file, and the available medical information, and offer any response they may have, and that the Police Commission be requested to review all relevant medical information related to various "choke hold" consequences."

The Chief Legislative Analyst's report (Addendum 5) reflected a survey of 12 law enforcement agencies throughout the United States. The survey disclosed that ten of the 12 surveyed agencies (83 percent) authorized the use of either the bar arm or carotid control

holds. The findings in the Chief Legislative Analyst's report concur with a recent survey conducted by members of the Department. Forty-six agencies were contacted in the greater Los Angeles area, including the Los Angeles Sheriff's Department and, of the 46, all but three authorized their officers to use either the bar arm or carotid control holds or both. In addition, the FBI was contacted and that agency uses the carotid control. No alternatives to the bar arm or carotid control holds were suggested by the agencies contacted in both surveys (see Addendum 1).

In researching information on control holds, medical opinions have been noted reporting varying opinions on the dangers of the holds (see Addendum 2) from "extremely dangerous in an unpredictable fashion" to "an adequate and reasonable measure to control suspects with minimum harm to the suspect and the police officer." There is very much an awareness of the danger involved in using these holds and, for this reason, the proper methods of application are strongly emphasized during training sessions.

3. "That the Police Department be requested to report to the Police, Fire and Public Safety Committee and the Public Health, Human Resources and Senior Citizens Committee within three months on the effects of the newly-adopted training bulletins on Phencyclidine (PCP) and the approved control techniques and devices mentioned in the report adopted by the Police Commission on February 28, 1978."

   In May of 1978, the Department published comprehensive training bulletins on PCP and its effects and on application of control holds (see Addendum 3). These training bulletins were distributed to all Department personnel and are the subject of periodic roll

call training. It is fairly certain that officers have an increased awareness of the effects of the drug and methods to control combative suspects through the distribution of the bulletins and videotapes on Phencyclidine (PCP) and control holds. However, evaluation criteria on the effectiveness of the training have not been developed.

4. "That the Police Department include in their report "Further training steps and control techniques that are being considered for implementation, including the requirement that officers "qualify" in the use of control techniques."

   There is great concern about the possibility of injuries, to both police officers and violent suspects, especially in light of the effects of new and sophisticated drugs such as PCP. To update and refine officers' proficiency in the use of Department-approved self-defense techniques, an in-service self-defense training program has been devised to be administered to all sworn personnel engaged in field duties. The officers receiving this training will be required to participate in a four-hour intensive, in-service, self-defense proficiency course. This course will be given on a continuing basis to ensure that all field officers receive this training at least once each year. This course will be given in conjunction with the mandatory four-hour course on cardiopulmonary resuscitation. Officers will be required to demonstrate proficiency in the use of control holds and will be subject to intensive training until they attain a satisfactory proficiency level in both practical application and a written examination (see Addendum 4).

   All officers engaged in field duties will be trained and tested for proficiency prior to the end of 1978 and

will be trained and tested at least once each year thereafter.

One non-physical method for controlling violent PCP users which appears to have considerable merit was developed by a Hollywood Area supervisor. While not a replacement for any of the physical controls, this technique stresses a calm, non-agressive and reassuring approach to dealing with PCP users who, because of their condition, react irrationally and often violently to even a harsh or forceful word or tone of voice. Hollywood Area has reported considerable success in reducing the frequency of altercations by using this method to decrease suspect anxiety during the arrest process. Training Division will evaluate the experiences of Hollywood Area personnel to determine whether this technique has potential for Department-wide application.

Through the use of videotapes and training bulletins, the Department will intensify the awareness of the effects of new and more unusual drugs such as PCP and the effective methods with which to control a combative person under the influence of a drug.

In conclusion, it should be emphasized that the control methods to which this report refers are part of the Department's continuing efforts to improve police operations. Research will continue, and when more effective techniques for accomplishing the police mission are identified they will be adopted.

Respectfully,

/s/ Daryl F. Gates
DARYL F. GATES
Chief of Police

Addendum No. 1

| | USE BAR ARM HOLD | USE CAROTID HOLD | PROBLEMS WITH INJURIES TO SUSPECTS | ALTERNATIVE HOLDS FOR SUSPECTS USING PCP | COMMENTS |
|---|---|---|---|---|---|
| Berkeley | YES | YES | NO | NO | — |
| Chicago | YES | YES | NO | NO | — |
| Detroit | YES | YES | NO | NO | — |
| Fresno | YES | Used But Not Officially Recommended | NO | NO | — |
| Kansas City | YES | NO | YES With Carotid Hold, Use Now Suspended | NO | — |
| Long Beach | YES | YES | YES With Bar Arm Hold | NO | Gang Up Theory |
| New York | YES | YES | NO | NO | — |
| Philadelphia | NO | NO | NO | NO | Gang Up Theory |
| San Diego | NO | YES | NO | NO | — |
| San Jose | Used But Not Recommended | YES | Police Overreact but No Injury to Suspects | NO | — |
| San Francisco | YES | YES | No When Used Properly | NO | One-On-One Theory |
| Santa Monica | NO | YES | NO | NO | — |

Intradepartmental Correspondence

August 29, 1978
2.2

TO: Assistant Commanding Officer, Personnel and Training Bureau

FROM: Commanding Officer, Training Division

SUBJECT: ADDITIONAL INFORMATION ON THE USE OF PHYSICAL FORCE

The following supplemental information on the use of force policies for all law enforcement agencies within Los Angeles County is provided in response to a request from the Assistant Commanding Officer, Personnel and Training Bureau.

## SURVEY OF LOS ANGELES COUNTY LAW ENFORCEMENT AGENCIES AND THE USE OF CONTROL HOLDS

| Agency | Use Bar Arm Control | Use Carotid Hold | Written Use of Force Policy |
|---|---|---|---|
| Alhambra | Yes | Yes | No |
| Arcadia | Yes | Yes | No |
| Azusa | Yes | Yes | No |
| Baldwin Park | Yes | Yes | No |
| Bell | Yes | Yes | No |
| Bell Gardens | Yes | Yes | No |
| Beverly Hills | Yes | Yes | No |
| Burbank | Yes | Yes | No |
| Compton | Yes | Yes | No |
| Covina | Yes | Yes | No |
| Culver City | Yes | Yes | No |
| Downey | Yes | Yes | No |
| El Monte | Yes | Yes | No |
| El Segundo | Yes | Yes | Yes |
| Gardena | Yes | Yes | No |

| Agency | Use Bar Arm Control | Use Carotid Hold | Written Use of Force Policy |
|---|---|---|---|
| Glendale | No | Yes | No |
| Hawthorne | No | No | No |
| Hermosa Beach | Yes | Yes | No |
| Huntington Park | Yes | Yes | No |
| Inglewood | Yes | Yes | No |
| Irwindale | Yes | Yes | Yes |
| La Habra | No | No | No |
| Long Beach | No | Yes | No |
| Los Alamitos | Yes | Yes | No |
| Manhattan Beach | No | Yes | No |
| Maywood | Yes | Yes | No |
| Monrovia | Yes | Yes | No |
| Montebello | Yes | Yes | Yes |
| Monterey Park | Yes | Yes | No |
| Palos Verdes | No | Yes | No |
| Pasadena | Yes | Yes | No |
| Pomona | Yes | Yes | Yes |
| Redondo Beach | Yes | Yes | No |
| San Gabriel | Yes | Yes | No |
| San Marino | Yes | Yes | No |
| Santa Monica | Yes | Yes | No |
| Seal Beach | Yes | Yes | No |
| Sierra Madre | Yes | Yes | No |
| Signal Hill | Yes | Yes | No |
| South Gate | Yes | Yes | No |
| South Pasadena | No | No | No |
| Torrance | Yes | Yes | No |
| Vernon | Yes | Yes | No |
| West Covina | Yes | Yes | No |
| Whittier | Yes | No | No |
| Los Angeles Sheriff's Department | No | Yes | No |

NOTE: The majority of agencies surveyed did not have a written policy on the use of force. The amount of force used is left up to the discretion of the individual officer within the constraints set down by the State Penal Code.

The following cities within Los Angeles County are currently contracted with the Los Angeles Sheriff's Department for police services:

Artesia
Bellflower
Carson
Cerritos
Commerce
Cudahy
Duarte
Hawaiian Gardens
Industry
Lakewood
La Mirada
Lancaster
La Puente
Lawndale
Lomita
Norwalk
Palmdale
Paramount
Pico Rivera
Rolling Hills
Rolling Hills Estates
Rosemead
San Dimas
Santa Fe Springs
South El Monte
Temple City
Walnut

/s/ F.A. Fox
F. A. FOX, Captain
Commanding Officer
Training Division

Addendum No. 2

DECLARATION OF THRIFT G. HANKS, M.D.

I, the undersigned, declare:

1. My name is Thrift G. Hanks. I am a physician duly licensed to practice medicine in the State of California. I am employed by the City of Los Angeles as Medical Director, Medical Services Division, Department of Personnel, and have my office at 1401 West Sixth Street, Los Angeles, California 90017.

2. I was graduated from the University of Illinois College of Medicine in 1939, served an internship at Grant's Hospital in Chicago, Illinois, and served as a resident in Internal Medicine at Henrotin Hospital in the period 1939-1941. Most of my career has been in the practice of occupational and aerospace medicine. As a Flight Surgeon in the United States Navy in World War II, I served on the staff of Vice-Admiral Bellinger as a part of my service. In this position I was Medical Officer for the Safety Division of the Naval Airforce, Atlantic Fleet. As such, I investigated all manner of aviation accidents and the causes of death or injury involving Navy pilots and aircrewmen. As a result of the work in the Navy on injury investigation and the development of protective devices against decelerative and other forces involved in accidental death, I received a commendation from the then Secretary of the Navy. Subsequent thereto, as Medical Director (1952-1957) and as Corporate Director of Health and Safety (1957-1964) for the Boeing Company, I was also responsible for the investigation of accidents involving injuries of many different types. In such capacities I developed the necessary basic understanding of forces and mechanisms productive of observed injuries. I have so observed, participated in, and personally carried out autopsies on fatal cases of injury.

3. I am a Fellow of the American Academy of Occupational Medicine, a Fellow of the Aerospace Medical Association, and a Fellow of the American Occupational Medical Association.

4. I have served in my present position as Medical Director for the past five years. As such, I have been concerned with the medical status of persons in police custody who have been delivered to the jails at Parker Center and the Van Nuys Police Station. As Medical Director I am informed whenever a death or critical injury occurs among arrestees or prisoners. In such instances, I become involved in a detailed review of the matter. At the Police Academy I have observed demonstrations of and discussed with training officers the application of the bar-arm and carotid holds. My experience as Medical Director has not revealed any incident in which neck restraints applied to prisoners have resulted in death or critical injury. In the training of cadets in the Police Academy, there have been a few occasions in which *repeated misapplications* of neck restraints by new recruits have resulted in sore throats and hoarseness in the cadet simulating the part of an arrestee. This type of injury has resulted from the prolonged application of a bar-arm control without the cadet simulating the arresting officer going on into the so-called carotid or "V" neck restraint.

5. Any severe rigid pressure against the interior neck can be potentially productive of serious injury to the larynx, the trachea, or para-laryngeal structures. It is not the potential injury that we are concerned with in the use of these holds, however, but rather, with the actual experience in their use, I will speak more on this matter later. A question has been raised as to whether or not the carotid hold could detach materials from intra-carotid atheromatous plaques, thereby raising the possibility of embolus-formation with the production of stroke. Although tens of thousands of

arrestees are delivered to the jails noted above, the medical staff has not observed instances in which any suspicion of such an outcome has been found. That is, experience does not bear out the otherwise legitimate concerns of theory.

6. Laryngeal or tracheal injuries productive of death are those leading to a blockage of the airway and thus death by suffocation. This asphyxial death is not easily mistaken. The struggles of the victim are most dramatic and, unless an airway can be established, inability to breathe leads rapidly to a fatal outcome. There are marked color changes and other signs of asphyxial death that are not easily missed. None of these signs or symptoms have been observed in our experience in spite of the use of the neck restraints.

7. Because of interest in the use of neck restraints over some period of time, I have been in touch with police surgeons in other parts of the country, one of whom, Dr. James F. Cooper of St. Louis, will be preparing an affadavit [*sic*] separate from this declaration. The following information I have obtained from Dr. Clarence Robinson, Senior Surgeon, New York Police Department:

> a. Dr. De Mayo, Chief Medical Examiner of the City of New York, stated that in his 30 years of experience there have been only two to three cases involving police officers or corrective officers in which injury due to restraints was even theoretically involved. There was one fatality among these and the use of the neck restraint was not shown to be contributory. Thus, according to Dr. DeMayo, in spite of the application of these holds thousands of times in this 30-year period, in no instance was such a hold considered to be contributory to a serious outcome. Dr. DeMayo stated that he feels that the holds are of negligible risk and much preferable to the use of other, much more dangerous, techniques or the use of weapons.

b. A recruit training officer of 23 years experience in the physical training of New York Police Department cadets could recall only one occasion during that time a neck restraint was alleged to have caused a fatal outcome. When the investigation of this incident was completed, however, it was found that the hold was not contributory; rather, the cause of death was due to a blow by a baton.

8. We should address, therefore, not theoretical or possible outcomes from the use of these holds, but actual experience covering many years and many thousands of instances in which these holds have been used without serious consequence. If they were eliminated, officers would then have to resort to dangerous martial arts techniques, the use of the baton, or the use of a gun. I must leave the discussion of martial arts techniques to others, but I can speak from observation and experience to the problem of the use of a baton.

9. The minimum control force that must be used in applying a baton to the head must, at the least, produce a concussion. Since this force cannot be easily judged and, in the exigencies of a confrontation can in no way be applied in a controlled manner, uncontrolled force may result in skull fracture. Similar considerations apply to the consequences of the application of a baton to points below the head, such as the abdomen, which can result in ruptured organs and broken bones. As indicated above, a blow on the neck by a baton can result in a fatal outcome.

10. Another theoretical cause of serious consequence from neck restraints has been raised regarding the so-called vago-vagal reflex arising from pressure on the carotid sinus located within the carotid arteries on either side of the neck. Doctors have elicited this reflex for many years to control certain kinds of cardiac arryhthmias, although recently cau-

tion has been urged that such massage could result in detachment of plaque material, with the consequences previously referred to. The speculation is, with respect to the carotid hold, that stimulation of the carotid sinus could cause a susceptible heart to stop beating due to "cardiac standstill". The fact that doctors have been using this particular manuever for decades in patients with known cardiac irritability and sensitivity and, again, that no such deaths have been identified in the use of such holds by the police, speaks entirely against the existence of such a hazard in reality, as opposed to theory.

11. It has also been speculated that the carotid hold can produce other types of neck injuries. Consideration of how this hold is applied shows that it results in a fixation of the head and neck with respect to the body, with the head of the person being controlled in a slightly flexed position and with no possibility of extension or rotation. Thus, severe injury to the spine or to the spinal cord would be essentially impossible as long as the hold is maintained. If, however, a police officer were to be instructed to use a "head lock", the head would be free to turn or the body would be free to turn, with the possible consequence of a neck fracture.

12. It is a common practice for "experts" in the medical profession to give contradictory testimony based upon theoretical considerations. Where the use of some technique, drug, or other medical application is being considered for use, all such theoretical considerations of reasonable content most certainly should be taken into account. In the current issue, however, expertness of opinion is not what is needed. Experience repeated thousands of times over in the United States has indicated that the holds in question are safe as compared with almost any alternative control methods. Experience indicates that while such holds may produce some injury, this injury is both rare and reversible and has not

been shown to produce a fatal outcome over many years of application. Before resorting to alternatives, therefore, one should take into serious account this safety record. To resort to the alternatives in the face of merely theoretical considerations would, in my opinion, impose a serious risk to the safety of many potential victims exposed to other methods of control.

13. If called as a witness, I would competently and truly testify as set forth in this declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California on May 5, 1978.

/s/ Thrift G. Hanks, M.D.

THRIFT G. HANKS, M.D.

## AFFIDAVIT OF JAMES F. COOPER, M.D.

State of Missouri, (City of St. Louis)—ss.

I, the undersigned, being duly sworn, hereby depose and say:

1. My name is James F. Cooper. I am a physician duly licensed to practice medicine in the State of Missouri. I maintain my medical offices at 3660 Vista Avenue, St. Louis, Missouri, 63110, and 12255 DePaul Drive, Bridgeton, Missouri, 63044. I am not a party to this action and I am not related to nor have I ever met any party to this action. If called to testify, I would competently testify to the following facts and opinions.

2. I graduated from Baylor University College of Medicine in Houston, Texas in 1960. I took my internship at the University of Tennessee Hospital in Memphis, Tennessee in 1960 to 1961. I took my surgical residency at St. Louis City Hospital and Barnes Hospital in St. Louis, Missouri in 1961 to 1965. Following my residency, I served in the United States Army from 1966 to 1968. I served as Chief of Surgery at the 24th EVAC Hospital at Long Bin, Republic of Vietnam, and I served as Chief of Surgical Clinics at General Leonard Wood Army Hospital in 1968. I have been in the practice of general and vascular surgery in St. Louis, Missouri from 1969 to 1978. I serve as a surgeon for the St. Louis Metropolitan Police Department.

3. I have been qualified and have testified as an expert witness relating to traumatic injuries on approximately twelve (12) different occasions over the last nine (9) years.

4. I am a Diplomate of the American Board of Surgery. I am a Fellow of the American College of Surgeons. I am a member of the Southwest Surgical Congress. I am a member of the Surgical Faculty of the St. Louis University

School of Medicine, and I am a member of the St. Louis Medical Society and the Missouri State Medical Society.

5. I have read and considered copies of the LAPD Training Bulletins dated July 31, 1972, numbered Volume 14, Issues 16 and 17, marked Exhibit A, incorporated herein by reference as contained in the declaration of Alex Griswold, M.D.

6. Training Bulletin Volume 4, Issue 16, describes two (2) control holds to affect control of suspects following arrest. The control holds describe movements affecting the neck by use of the forearm and elbow causing compression of the structures of the neck by use of the aforementioned. The diagram marked Exhibit B attached to Doctor Griswold's declaration has been read and I am in agreement.

7. *BAR ARM CONTROL:* Bar Arm Control is a preliminary control used by the LAPD to obtain control of the suspect. Use of the Bar Arm Control is maintained by placing the arm around the structures of the neck, immobilizing the suspect by counter-movements when the forearm is placed on the anterior portion of the neck when the suspect is brought to the ground. The structures of the neck are pliable; the trachea is rigid only in the anterior three-quarters (¾) of the shaft of the trachea. It is composed of cartilaginous material which is pliable which results in mobility of the neck structures. Rupture and fracture of the larynx and trachea are rare, and most have been reported mainly following high-velocity blunt trauma, secondary to automobile injuries. The muscles and bony portions of the neck are protective to the larynx and trachea. The anterior muscles contract in a protective fashion when the neck is touched.

The nerves of the neck, those being laryngeal and pharyngeal, are small nerves not easily accessible, buried deep within the structures of the neck and very difficult to find

during surgical exposure. Laryngeal spasms, which shut off the tracheal air passage, usually occur from abnormal secretions in the throat and mouth which involuntarily throw the vocal cords into spasm.

The LAPD recognizes the risk of prolonged application of these holds or excessive force as outlined in the Bulletin. These structures of the neck are not easily damaged and damage through injury usually is one of contusion (i.e., bruising of the soft tissue of the neck). Based on the LAPD Bar Arm Control Training Bulletin, and my experience and expertise as a physician, it is my opinion that the Bar Arm Control does not constitute extreme hazard to the suspect and is suitable to use to bring the suspect under control with chance of less injury to his body than other current forms of control.

8. *CAROTID CONTROL:* The carotid control hold, as outlined in the LAPD Bulletin, shows that the suspect's neck is placed in the elbow of the Police Officer with the head being forced forward.

The carotid artery runs deep in the neck and branches variably, usually in the middle of the neck into two (2) branches to supply areas of the brain and scalp.

Carotid artery compression has been used medically for a number of years. It has been used to determine blood flow or lack of blood flow to the brain. To compress the carotid artery, the fingers are placed directly on one (1) artery on either side of the neck. The pulse is felt and the artery compressed. A large series, over four thousand (4,000) patients examined, as reported in the literature, shows not one (1) untoward effect such as stroke or death resulted.

In the LAPD Training Bulletin on Carotid Compression, as outlined in the above paragraph, finger compression is not used. With the suspect's neck placed in the elbow of

the Police Officer, the entire neck surface is compressed, not specifically the carotid artery. Recent experimentation in the measurement of blood flow using the carotid artery hold in adult volunteers, has shown inability to demonstrate carotid artery compression by use of this hold. The blood flow measurement has been measured with the Doppler, an instrument which transmits high-frequency sound waves and receives signals from blood vessels to determine blood flow. These tests have shown, in a controlled situation, that the carotid artery is not compressed and does not carry with it the damage inherent with cut-off blood flow to the brain.

The Vagus nerve is a nerve which runs in the neck but is not easily accessible. The carotid sinus is located in the carotid artery. This sinus mechanism can be stimulated by vigorous massage of the neck. Massage of the neck can result is some slowing of the pulse, usually in elderly people. To elicit this response it is necessary to vigorously massage the neck for fifteen (15) or twenty (20) seconds. The carotid control hold does not stimulate the carotid sinus mechanism. Danger of stimulation of the Vagus nerve is not present in this carotid hold.

9. Based upon the LAPD Carotid Control Training Bulletin and my experience and expertise as a physician, experience in the Vascular Laboratory utilizing the carotid control, measurement of blood flow by the use of sophisticated medical instrumentation, it is my opinion that the carotid hold is safe, will not result in severe brain or neck injury, and is an adequate and reasonable method to control suspects with minimum harm to the suspect and the Police Officer.

Executed this 4th day of May, 1978, at 3660 Vista Avenue, St. Louis, Missouri.

/s/ James F. Cooper, M.D.,
JAMES F. COOPER, M.D., F.A.C.S.

This 4th of May 1978

Clarice Marshall
Clarice Marshall

County of St. Louis, State of Missouri, My commission expires 12/17/78.

DECLARATION OF ALEX GRISWOLD, M.D.

State of California, County of Los Angeles—ss.

I, the undersigned, being duly sworn, hereby depose and say

1. My name is Alex Griswold. I am a physician duly licensed to practice medicine in the State of California. I maintain my medical offices at 1932 14th Street, Santa Monica, California 904[*illegible*] I am not a party to this action and I am not related to nor have ever met any party to this action. If called to testify, I would competently testify to the following facts and opinions.

2. I graduated from the University of Louisville Medical School in 1942. I took my internship at St. Joseph's Hospital from 1942 to 1943. I practiced medicine in the armed forces from 1943 to 1946. I took my residency in pathology from 1947 to 1950 at Wadsworth Veterans Hospital in Los Angeles, California. I served as a pathologist in the offices of the Los Angeles County Medical Examiner-Coroner's Office from 1950 to 1963. I have also been engaged in the private practice of pathology from 1950 to present.

3. I have been qualified and have testified as an expert in pathology on approximately fifty different occasions over the past twenty-eight years.

4. I am a Fellow of the American Academy of Forensic Sciences and a member of the Los Angeles County Medical Society and California Medical Association.

5. I have read and considered copies of the LAPD Training Bulletins dated July 31, 1972, numbered Vol. 14, Issues 16 and 17, marked Exhibit A, attached hereto and incorporated herein by reference.

6. The "control holds" described affect various structures organs, arteries and nerves in the neck. I have caused to be prepared a diagram of a section of the neck at about

the level of the sixth cervical vertebra which accurately depicts certain structures in the area affected. The diagram, marked Exhibit B, is attached hereto and incorporated herein by references. In connection with preparing the diagram, I consulted the text and diagrams contained in *Anatomy, Descriptive and Surgical* (1901 Ed.) Henry Gray, F.R.S. at pp. 316, *et seq*. This is the classic historical work of medical science often referred to as *Gray's Anatomy* and it is reliable authority for descriptive and surgical anatomy.

7. As shown by the diagram, the large vessels of the neck (carotid artery and jugular vein) as well as the vagus nerves are contained in a strong sheath, denominated the carotid sheath.

8. The forward area of the neck contains, among other things, the trachea, larynx, esophagus, hyoid bone and thyroid. The structures have the following physiologies. The trachea is the passageway for air to and from the lungs. The larynx is part of the respiratory passage and primarily functions to form sounds and speech. The esophagus is the passageway for food and liquid to the stomach. The hyoid bone is the supporting structure for the muscle of the anterior neck and is in close association anatomically with the larnyx and upper trachea and their cartilages. Injury to the hyoid involves hemmorage [*sic*] and swelling at or near the trachea and larynx.

9. From a medical point of view, the bar arm control is extremely dangerous in an unpredictable fashion. Pressure from a locked forearm across the neck sufficient to compress and close the trachea applied for a sufficient period of time to cause unconsciousness from asphyxia must, to an anatomical certainty, also result in extreme pressure to the delicate organs in the front of the neck. This leads to a very high risk of a fractured hyoid bone or crushed larnyx. The risk is substantial, but at the same time, unpredictable.

10. It depends for one thing on which vertical portion of the neck the forearm pressure is exerted. The LAPD Training Bulletin does not specify which portion of the neck should be compressed. If primary force were applied to the upper and middle portion of the throat directly under the chin, the result might be compressing injury of the trachea, larynx and hyoid bone. If the force were applied to the center and lower of the neck, the result might be compression injury to the trachea and thyroid.

11. Another factor contributing to unpredictability is the reaction of the victim. The frontal area of the throat is one of the most highly innervated in the body with both sensory and motor nerves. The laryngeal and pharyngeal nerves are the nerves most directly affected by the pressure exerted in a bar arm control. The traumatic interferences on these nerves can have at least two adverse effects. It can result in a laryngeal spasm or seizure which simply shuts off the trachial air passage, leading to death by asphixiation. Also, it must result in transmission to the brain of nerve messages that there is immediate, acute danger of death. This transmission immediately sets up a "fight or flee" syndrome wherein the body reacts violently to save itself or escape. Adrenalin output increases enormously; blood oxygen is switched muscles [*sic*] and strong, violent struggle ensues which is to a great extent involuntarily [*sic*]. From a medical point of view, there would be no way to distinguish this involuntary death struggle from a willful, voluntary resistance. Thus, an instruction to cease applying the hold when "resistance ceases" is meaningless.

12. This violent struggle increases the risk that the forearm pressure applied will adversely affect vital, delicate organs in the throat and increases the risk of permanent injury or death to the victim. This struggle additionally reduces the oxygen reserve in the body. This reserve may

already be in a state of reduction by reason of cardiac, respiratory or other disease.

13. The LAPD appears to recognize, if misconceive, the severe risk of harm arising from application of the bar arm control since it does recommend proceeding directly to a carotid hold (treated below). The misconception is that the length of time in applying the hold is the sole measure of risk. This is simply not true. If sufficient force is applied, the larnyx can be crushed or hyoid fractured with death ensuing, in seconds. An irreversable [*sic*] laryngeal spasm can also occur in seconds.

14. Based upon the LAPD Bar Arm Control Training Bulletin my experience and expertise as a physician and the foregoing facts, it is my medical opinion that application of the bar arm control constitutes the use of force that involves an unpredictably high risk of death to the victim.

*CAROTID CONTROL*

15. From a medical point of view, the carotid control is extremely dangerous in a manner that is at least as equally unpredictable as the bar arm control.

16. There are two carotid arteries, one on each side of the neck as shown in Exhibit B. They are contained in strong carotid sheaths which also contain, among other things, the jugular veins and the vagus nerves. The carotid arteries carry oxygenated blood from the heart to the brain. The carotid control appears to be designed to stop the flow of oxygenated blood to the brain. When applied with sufficient pressure, this control will crush the carotid sheath against the bony structure of one neck, foreseeably shutting down the supply of oxygenated blood to the brain and leading to unconsciousness in approximately 10 to 15 seconds.

17. However, pressure on both carotid sheaths also results in pressure, if inadvertant or unintended, on both of

the vagus nerves. The vagus nerves (right and left) arise in the brain and are composed of both sensory and motor fibers. The distribution of both includes the larynx, trachea, heart, lungs, stomach and accessory structures. Stimulation of these nerves by pressure can activate reflexes within the vagus system that can result in immediate heart stoppage (cardiac arrest).

18. *Pathophysiology, Altered Regulatory Mechanisms in Disease* (2d Ed. 1976) J.P. Lippincott Company is a work of medical science and is reliable authority for physiology, pathology and internal medicine. It states, at page 7, "The vagus has strong depressor activity on pacemaker cell function and is capable of eliciting total cardiac arrest under conditions of extreme stimulation."

19. Based upon the LAPD Carotid Control Training Bulletin, my experience and expertise as a physician and the foregoing facts it is my medical opinion that application of the carotid control constitutes the use of force that involves ar. unpredictably high risk of death in the victim.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 10th day of April, 1978, at Santa Monica, California.

/s/ Alex Griswold, M.D.
ALEX GRISWOLD, M.D.

STAFF STUDY

January 30, 1978

Research of the Neck Restraint

*PROBLEM*

A. To acquire and compare the varying viewpoints on the use of the neck restraint.

B. To recommend for or against the continued use of the neck restraint by officers of the Kansas City, Missouri Police Department in the control of aggressor/resister situations.

*PROCEDURE*

A. Written material from the below listed sources was obtained and reviewed.

1. A letter sent to Chief Van Kirk from Mr. Sidney Willens, Attorney at Law, dated May 24, 1977.
2. A letter sent to Chief Van Kirk from Dr. Bernard M. Abrams, Head of the Section of Neurology at the Menorah Medical Center, dated June 9, 1977.
3. A memorandum from Lt. Col. Harris, then Assistant Chief of Police, dated June 13, 1977.
4. Information on the use of the neck restraint from Mr. James Lindell, Physical Training Instructor, Regional Center for Criminal Justice.
5. A letter from Captain J.H. Dickson, Missouri State Highway Patrol, to Mr. James Lindell, regarding their use of the neck restraint.
6. A letter from Mr. William Laub, Self Defense Instructor, St. Louis Police Academy, to Mr. James Lindell, regarding their use of the neck restraint.
7. A memorandum from Major Gerald Kimmis supporting the use of the neck restraint.

8. Two Jail Incident Reports from Detention Unit personnel supporting the use of the neck restraint.

B. A letter of inquiry was sent to twenty-five police physicians and surgeons requesting professional medical opinions regarding the neck restraint.

C. Copies of a survey administered by Mr. James Lindell were obtained and reviewed.

*FACTS*

A. Mr. Sidney Willens contends that, "the 'carotid hold' may be an acceptable subduing tactic under extreme circumstances," but believes such force would not seem necessary in a controlled environment such as the city jail. (Annex A, Attachment I)

B. Mr. Willens urged the Chief to, "call a halt to the use of the hold until more is known about it and until you know that all civilian and police jail personnel know how to use it if the tactic is resumed." (Annex A, Attachment I)

C. Dr. Bernard Abrams, Head of the Section of Neurology at the Menorah Medical Center informed the Chief that compression or massage of the carotid arteries was once a proper medical technique, but that current thinking is that such a technique could break off material in the carotid artery and cause stroke, death or permanent injury. (Annex A, Attachment II)

D. The use of the "neck restraint" or "sleeper hold" by members of this department has been prohibited since June 13, 1977. (Annex A, Attachment III)

E. Only nine responses were received to the questionnaires sent to police physicians and surgeons. (Annex B, Attachment II)

F. Several doctors referred to the hold known as the "bar arm" and stated that damage to the larynx could occur. (Annex B, Attachment III)

G. Two of the responses to the questionnaire sent to doctors indicated that the use of the neck restraint was opposed without qualification. (Annex B, Attachment III)

H. Five of the nine medical responses state that the use of the neck restraint can cause adverse effects on some people. (Annex B, Attachment II)

I. Five of the nine medical responses state that the use of the neck restraint can cause adverse effects; however, they endorse its use in certain situations. (Annex B, Attachment II)

J. Dr. Ellis, Kansas City, Missouri, states that the incidence of causing stroke or death is roughly 1/500 to 1/1,500 people. Most cases are reported in individuals older than 40 years. (Annex B. Attachment III)

K. Dr. Abrams, Menorah Medical Center, states the threat of stroke, death or permanent injury, exists primarily in people over the age of 40. (Annex A, Attachment II)

L. A maxim in physical resist situations, according to Mr. James Lindell, is that the longer resistance is allowed to continue the greater likelihood that an injury will occur to the officer, the subject, or both. (Annex C, Attachment I)

M. Mr. James Lindell states that the ability to apply only the proper amount of force required at any given moment in a physical resist situation is relatively difficult to achieve with most other (than the neck restraint) restraint methods. (Annex C, Attachment I)

N. Mr. Lindell cites a number of different types of injury the officer subjects himself to when he attempts to con-

trol a resister or aggressor by encircling that person's arms or waist from the front or the back. (Annex C, Attachment I)

O. Mr. Lindell states that no other control technique offers the flexibility, safety and opportunity for application against such a wide variety of aggressor/resister situations as does the neck restraint. (Annex C, Attachment I)

P. Mr. Lindell states this technique has been used in sport judo successfully for 95 years without a single fatality in practice or in competition. (Annex C, Attachment I)

Q. Captain Dickson, Missouri State Highway Patrol, stated a belief that other types of holds, blows or force could cause more injury than the neck restraint. (Annex C, Attachment II)

R. Mr. Laub states a belief that the neck restraint is a safe and effective means of controlling an unruly person without seriously injurying [*sic*] him. (Annex C, Attachment III)

S. Two Jail Incident Reports written by detention personnel stated the use of the neck restraint could have prevented injury. (Annex C, Attachment IV)

T. A memorandum from Major Gerald Kimmis cites one instance where the use of the neck restraint possibly prevented injuries as well as adverse public reaction. (Annex C, Attachment V)

U. The responses of the surveyed officers are as follows: (Annex D, Attachment II)

1. 72.53% have used the neck restraint to control a subject. 27.47% stated they have never used the neck restraint to control a subject.

2. 35.16% stated they have used the neck restraint to render a subject unconscious. 62.64% stated they have not rendered a subject unconscious by the use of the neck restraint.
3. 72.53% stated that they have received training in the use of the neck restraint while 27.47% have not.
4. 30.77% stated they have received instruction in the use of the neck restraint within the last year.
5. 85.71% stated they think the neck restraint is a needed police control tactic in aggressor/resister situations.
6. Officers' responses to other police control methods being equally effective in aggressor/resister situations are as follows:
   a. 29.67% state yes.
   b. 37.36% state no.
   c. 24.17% state it depends on the situation.
   d. 1.10% state unknown.
   e. 7.70% did not answer the question.

V. Mr. Maier stated we could legally use the neck restraint if proper safeguards were taken and under appropriate circumstances. (Annex E, Attchment I)

W. The staff officer assigned to this study was unable to locate accurate or comprehensive information about the number of times members of the department were required to use any form of force. (Annex F, Attachment I)

X. None of the sources referenced in this study pointed out any single instance of death or permanent injury arising from the use of the "neck restraint" or "sleeper hold." (Annex B, Attachment III)

*DISCUSSION*

On June 27, 1977, the Planning Unit was requested to gather information from medical doctors and other law enforcement agencies regarding use of the neck restraint. This project originated due to a letter from Dr. Bernard Abrams to Chief Van Kirk, inferring the neck restraint could cause a stroke, death or permanent injury. Dr. Abrams had corresponded with Mr. Sidney Willens regarding an incident which occurred in the Detention Unit. Consequently, the use of the neck restraint was immediately suspended by our department pending further research and evaluation.

Letters of inquiry were sent to twenty-five police physicians and surgeons requesting their opinion on the use of the neck restraint. Nine doctors responded to the inquiry. Of these nine, five stated that the use of the neck restraint could cause adverse effects but would endorse its use in certain situations.

Dr. George Sonnenberg, Police Surgeon, New York State, made reference to a "clinical situation" as opposed to a "street situation" in his statement, "From an armchair of a Neurology Department in a hospital, to 3:00 a.m. in a life and death struggle at the scene, makes quite a difference in the method of handling the situation."

Several doctors made reference to a hold called the "bar arm" and stated it could cause damage to the larynx. It appears obvious that these doctors misunderstood the neck restraint. It is the understanding of the reporting officer that if the neck restraint is properly applied, there is no threat of damage or injury to the larynx.

Two doctors stated the threat of stroke, death or permanent injury exists primarily in people over 40 years of age.

Mr. Lindell stated that in physical resist situations, the longer the resistance is allowed to continue, the greater the likelihood of injury to the officer, the subject, or both. If an officer encircled the subject's arms or waist from the front, the officer could be subject to any of the following: front head butt; bites on the face, neck, or head area; kicks or knee to the groin; foot stomps; groin strikes or grabs; injury to the hands, arms, elbows or shoulders if the subject falls or throws himself to the ground; or possible disarming by the subject. If an officer encircled the subjects arms or waist from the rear, the officer could also be subjected to many of the same assaults as mentioned above. Mr. Lindell stated that no other control technique offers the flexibility, safety and opportunity for application against such a wide variety of aggressor/resister situations as the neck restraint.

Captain Dickson, Training Division, Missouri State Highway patrol, stated that he believes other types of holds, blows or force could cause more injury than the neck restraint.

Mr. Laub of the St. Louis Police Academy stated that he believed the neck restraint is a safe and effective means of controlling an unruly person without seriously injurying [*sic*] him.

In an effort to control an unruly or aggressive subject, the officer may use the baton. This would be done through strikes or jabs to the subject, which, according to Dr. Norman Steiner, Police Surgeon, San Francisco Police Department, are more traumatic than the use of the neck restraint.

Another possible alternative might require more use of mace. It is the opinion of the reporting officer that many resist situations occur suddenly; consequently, there is nct

always ample time to use the mace. Also, the use of mace may not be practical if it could affect other officers or innocent bystanders.

As a last resort, if an officer felt he was in fear for his safety, he may resort to the use of the firearm.

*CONCLUSIONS*

A. There have been no reported deaths attributed to the neck restraint.

B. Use of the neck restraint offers less chance of injury to the officer and subject as opposed to other holds or types of force.

C. Five of the nine doctors indicated the use of the neck restraint could cause adverse effects; however, they endorse its use in certain situations. At the time of the inquiry, Dr. Jacob Kraft, Kansas City, Missouri Police Department Police Surgeon, stated he was not able to give a valid opinion regarding the neck restraint, but would do so as soon as possible. At this time, there has been no additional response from Dr. Kraft.

*ALTERNATIVES*

A. Continue the present policy prohibiting the use of the neck restraint.

B. Reinstate the use of the neck restraint with specific guidelines.

C. Due to the fact that Dr. Jacob Kraft is the medical advisor for the department, he should be requested to make a medical determination on the use of the neck restraint, and his determination be considered in the department's final decision.

*RECOMMENDATIONS*

A. Reinstate the use of the neck restraint with specific guidelines for its use.

B. Issue a written directive to establish guidelines for use of the neck restraint. The options are:

1. A General Order similar to the General Order on the use of mace.
2. A Training Bulletin similar to Attachment I, Annex C, "Police Defensive Tactics" by Mr. James Lindell.
3. A Department Memorandum which combines reinstatement of the use of the restraint and general guidelines for its use.

C. Implement a training program with the following components:

1. Retraining of all Detention Unit personnel in the proper use of the restraint.
2. Training of all Division Training Officers in the use and instruction of the restraint.
3. Training by Division Training Officers of all patrol division personnel in the proper use of the restraint.

D. Require the submission of a report anytime an officer uses the neck restraint. The options are:

1. An Interdepartment Report, Form 191 P.D.
2. A Form 100 P.D. similar to the report required for the discharge of firearms.

/s/ Barbara Baker
Officer Barbara Baker
Planning Unit

TABLE OF ANNEXES

ANNEX A

Attachment No. I — Letter from Mr. Willens to Chief

Attachment No. II — Letter from Dr. Abrams to Chief

Attachment No. III — Memo from Lt. Col. Lester Harris

ANNEX B

Attachment No. I — Letter of inquiry to doctors

Attachment No. II — Statistical graphs of doctors responses

Attachment No. III — Letters from doctors

ANNEX C

Attachment No. I — Police Defensive Tactics by Mr. James Lindell

Attachment No. II — Letter from Missouri Highway Patrol

Attachment No. III — Letter from St. Louis Police Academy

Attachment No. IV — Two Jail Incident Reports

Attachment No. V — Memorandum from Major Kimmis

ANNEX D

Attachment No. I — Recap of survey and copy of questionnaire

Attachment No. II — Graphs of survey results

ANNEX E

Attachment No. I — Interview with Mr. Manfred Maier

ANNEX F

Attachment No. I — Memo to file from Major Braden

ANNEX A

Attachment No. I — Letter from Mr. Willens to Chief

[Letterhead]

May 24, 1977

Marvin L. Van Kirk
Chief of Police
1125 Locust
Kansas City, Missouri 64105

Dear Chief Van Kirk,

Some of your jail personnel are playing with fire and don't know it.

They force prisoners into an unconscious state by use of what your department calls a "sleeper hold." On the night of March 4 my two clients collapsed three times at the hands of your jail personnel.

Local neurologists say there is danger in shutting off the cartoid [*sic*] artery that supplies blood and oxygen to the brain. Local anesthetists who deal daily in operating rooms say they cannot imagine making anybody unconscious that way. No local physician with whom I have spoken supported the use of the hold.

In Denver a police academy technician said the department last month approved the use of the hold. When I telephoned the Denver physician on whom the department relied in authorizing the hold the doctor said, "Oh, God, no, You can kill a man that way. They misunderstood me. Give me the academy number so I can call them." Other physicians elsewhere are also astonished.

In St. Louis the hold is called the "naked strangle" and is permitted based on some article by a Dr. Kiowi. [*sic*]

Norman Laird, correctional director of the Bureau of Prisons in Washington, says never in the history of the

bureau has the hold been used. "We teach no offensive holds," says Mr. Laird. Mr. Jim Henderson, regional director of the Bureau of Prisons, says if four or five officers are around a prisoner we do what it takes to hold the prisoner down but we don't use a "sleeper hold."

The New York City police department apparently does not sanction the hold. The Los Angeles police department more properly calls the tactic the "carotid hold." Due to deaths Police Chief Edward Davis called for a Board of Inquiry into the use of the hold. Testimony was elicited from doctors, policemen, and others. The board concluded in 1975 that the hold can be used under certain circumstances. I suggest you get a copy of this report from Chief Davis as apparently the private report is not available to citizens. The academy here mailed me a page of a publication of the U.S. Judo Ass'n.

In substance, Chief Van Kirk, the "carotid hold" may be an acceptable subduing tactic under extreme circumstances. ***But such force would not seem to be necessary in a controlled environment such as a city jail where policemen greatly outnumber a single struggling unarmed prisoner.*** I urge you to call a halt to the use of the hold until more is known about it and until you know that all civilian and police jail personnel know how to use it if the tactic is resumed.

Sincerely,
Sidney L. Willens

cc: Police Commissioners
Interested Physicians
Interested Citizens
News Media

ANNEX A

Attachment No. II — Letter from Dr. Abrams to Chief

[Letterhead]

Marvin L. Van Kirk
Chief of Police
Police Department of Kansas City, Missouri
1125 Locust
Kansas City, Missouri 64106

My Dear Chief Van Kirk:

I am Head of the Section of Neurology at the Menorah Medical Center and in that capacity consider myself to be a staunch supporter of our excellent police force. I have been made aware by Mr. Sidney Willens of cross correspondence between you, him and other interested citizens concerning the so-called "carotid hold". I think that I would be remiss if I did not let you know what current neurological thinking is concerning a manipulation of the carotid arteries. Let me stress at the outset that this is no reflection on "brutality, brute-force or negligent intent". For many years it was considered a proper medical technique to either compress or massage the carotid arteries in order to see whether there were change [*sic*] in pulse or problem with one or the other carotid arteries. About 5 to 7 years ago, as there was a [*illegible*] awareness that this procedure done in the gentlest of manners by a medical person, could break off material in the carotid artery and cause a stroke, death or permanent injury. This is because in many people, especially over the age of 40, the carotid arteries [*illegible*]arteriosclerotic and relatively brittle or containing [*illegible*] as [*illegible*]. These plaoques, if disturbed [*illegible*].

[*illegible*] into the smaller arteries supplying [*illegible*]. [*illegible*] causing occlusion of those blood vessels and [*illegible*].

[*illegible*] frowned upon procedure is [*illegible*].
[*illegible*] compress or massage the carotid arteries [*illegible*].
[*illegible*] would like to be informed about this and I [*illegible*].
[*illegible*] happy to discuss the situation with [*illegible*].
[*illegible*].

Thank you for your kind attention.

Very respectfully yours,

/s/ Bernard M. Abrams
Bernard M. Abrams, M.D.

BA:sn
cc: Sidney L. Willens

ANNEX A

Attachment No. III — Memo from Lt. Col. Lester Harris

MEMORANDUM

June 13, 1977

TO: All Bureau Commanders

FROM: Lt. Col. Lester Harris, Assistant Chief of Police

SUBJECT: Neck Restraint or "Sleeper Hold"

The use of a physical control tactic known as the "neck restraint" or "sleeper hold" has recently come into controversy.

A letter has been received from Dr. Bernard Abrams, Head of the Section of Neurology at the Menorah Medical Center (copy attached), which expresses his opinion that there is reason to question the safety of this restraint.

In view of the medical opinions expressed by Dr. Abrams, the utilization of the neck restraint is suspended immediately, pending further research and evaluation. Please arrange for immediate dissemination of this directive to all personnel of your command.

/s/ Lester Harris
Lt. Col. Lester Harris
Assistant Chief of Police

ANNEX B

Attachment No. I — Letter of inquiry to doctors

[Letterhead]

POLICE DEPARTMENT

September 26, 1977

Dear Dr. _____:

The instruction and use of the neck restraint was instituted at the Regional Training Academy in October, 1970. Since that time, the restraint has been utilized by department personnel in restraining subjects by using only the degree of force necessary to control them with less risk of injury to the officer or the subject.

The neck restraint is applied by encircling the neck with either arm so that the elbow is positioned to the front of the throat with the palm facing downward. In the position the bicep is pressed against the side of the neck on one side and the inside of the forearm is positioned against the other side of the neck. The free hand is then brought palm up and the two hands clasp palm to palm. Control is exerted by drawing the palm up hand rearward causing the elbow to act as a hinge. This action allows the upper and lower arm to scissor against the side of the neck. Immediately upon encircling the neck the officer presses the side of his head against the back of the subject's head to increase pressure forward and to prevent any attempt by the subject to butt him.

As of June 13, 1977, our department has ceased the use of this restraint based on information contained in the enclosed letter.

We would appreciate your professional medical opinion regarding the neck restraint. At your earliest convenience, could you please send your response to:

Officer Barbara Baker
Staff Research Unit
Room 420
306 East 12th Street
Kansas City, Missouri 64106

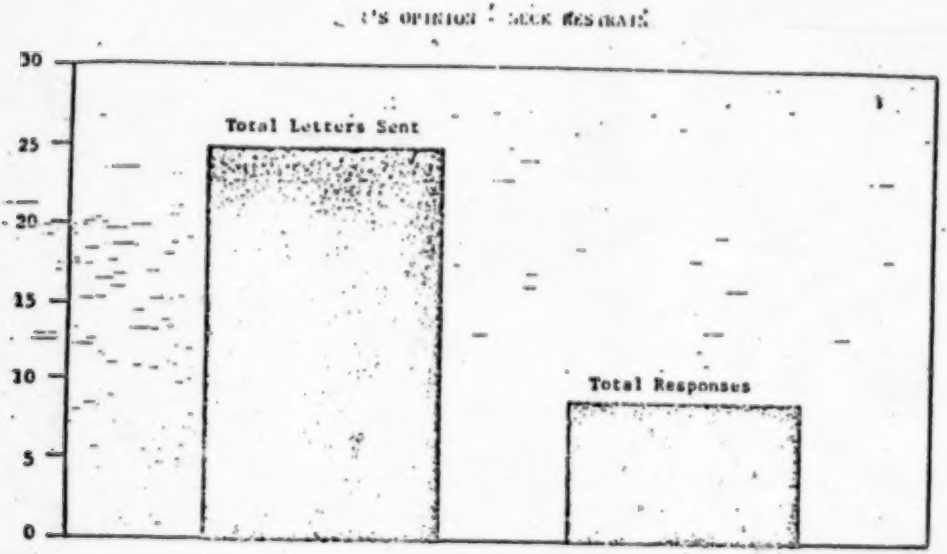
Thank you for your assistance in this very important matter.

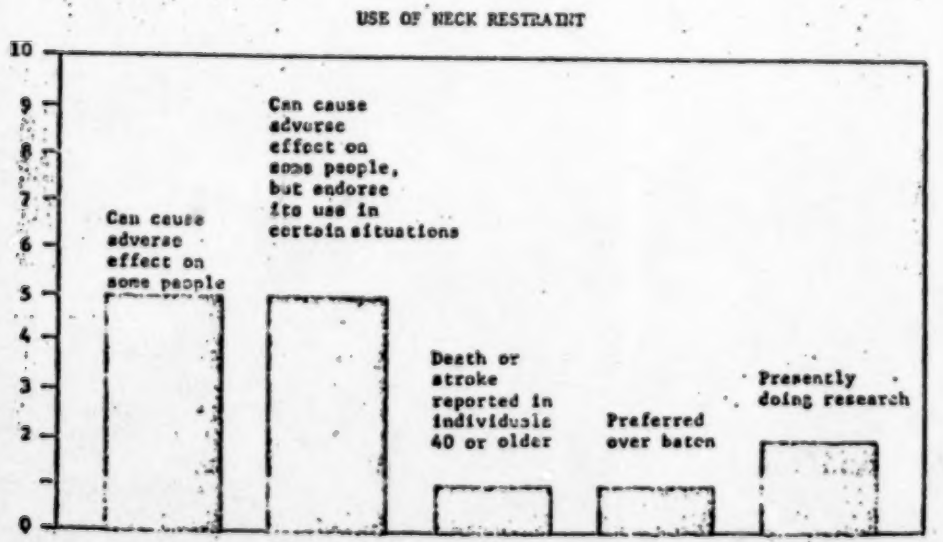
Respectfully,

Major Larry Joiner
Commander
Administrative Analysis Division

# ANNEX B

## Attachment No. II — Statistical graphs of doctors responses



ANNEX C

Attachment No. I — Police Defensive Tactics by Mr. James Lindell

POLICE DEFENSIVE TACTICS
K.C.P.D.

Prepared by James Lindell
Physical Training Supervisor

RE: Use of the Rear Neck Restraint in Police work.

*HISTORY*

The instruction and use of the neck restraint was instituted at the Regional Training Academy in October 1970. The use of this technique is routinely taught at the majority of large police departments in the United States.

The technique is most frequently identified with the sport of judo where it has been used successfully for 95 years without a single resultant fatality either in practice or in competition.

The use of the neck restraint in sport judo has been continued despite reported medical findings that the practice may be detremental [*sic*] to some individuals. The use of this restraint has been continued in sport judo because after practical experience and application over many years no permanent deleterious effects have been noted by its practitioners.

*FUNCTION IN POLICE WORK*

The neck restraint is a superior method of restraint in control or aggressor/resistor [*sic*] situations because once applied the officer has achieved the capability of restraining the subject by using only the degree of force necessary to control him, i.e. mild, medium, maximum in a minimum period of time.

A maxim in physical resist situations is that the longer resistance is allowed to continue the greater the likelihood that an injury will occur to the officer, the subject, or both.

The properly applied neck restraint has the effect of concluding a physical resist situation more quickly with less risk of injury to the officer or the subject than any other known method of restraint.

*ALTERNATE RESTRAINT METHODS*

The ability to apply only the proper amount of force required at any given moment in a physical resist situation is highly desirable, but also relatively difficult to achieve with most other restraint methods. For example, the use of wrist locks, arm bars and arm locks are largely dependent upon the position the resistor/aggressor [*sic*] happens to be in at the moment of application and the kind and degree of resistance that is being offered at the time. Successful control with any locking technique requires a relatively high degree of skill to apply.

Some unskilled control attempts by the officer can result in injury or extreme danger to him if he attempts to use them. For example, if the officer encircles the subject's arms or waist with his arms from the rear he could be subject to the following kinds of assault:

1. Rear head butt
2. Injury to the hands, arms, elbows, or shoulders if the subject falls or throws himself to the ground.
3. Rear groin kick
4. Foot stomp
5. Groin strike or grab
6. Disarming by the subject

If the officer encircles the subject's arms or waist from the front he could be subject to these kinds of assault:

1. Front head butt

2. Bites on the face, neck, or head area
3. Kicks or knee to the groin
4. Foot stomps
5. Groin strikes or grabs
6. Injury to the hands, arms, elbows, or shoulders if the subject falls or throws himself to the ground.
7. Disarming by the subject

A Kansas City officer recently attempted to restrain a subject from the front with both arms and was disarmed and struck with his own weapon which discharged on impact.

For these reasons this kind of restraint attempt cannot be approved and in fact should be avoided whenever possible because of the high incident of risk associated with its use.

*NECK RESTRAINT USE*

When the neck restraint technique is thoroughly learned it can be retained and used with little or no practice because of the simplicity of application. The neck restraint can be applied from any position, front, side, or rear without concern for a change in the subject's position or any movement he may make as long as initial contact and control have been established.

The neck restraint is taught to be applied from either a standing, kneeling, or prone position so that no matter what height level the subject assumes, restraint can be continuously maintained without loss of control.

No other control technique offers the flexibility, safety, and opportunity for application against such a wide variety of aggressor/resistor [*sic*] situations that occur in police work.

*APPLICATION*

The neck restraint is applied by encircling the neck with either arm so that the elbow is positioned to the front of the throat with the palm facing downward. In this position the bicep is pressed against the side of the neck on one side

and the inside of the forearm is positioned against the other side of the neck. The free hand is then brought palm up and the two hands clasp palm to palm. Control is exerted by drawing the palm up hand rearward causing the elbow to act as a hinge. This action allows the upper and lower arm to scissor against the side of the neck. Immediately upon encircling the neck the officer presses the side of his head against the back of the subject's head to increase pressure forward and to prevent any attempt by the subject to butt him.

Simultaneously with the above actions the subject is pulled rearward causing him to lose his balance. Once this has been accomplished the subject is unable to use his leg, waist, or shoulder strength to continue resistance and he will remain under control as long as his balance continues to be broken rearward. With this kind of off-balance restraint, the size and strength of the subject becomes relatively unimportant so that an officer who is of a smaller stature or with less strength can subdue a larger belligerent.

*DEGREES OF CONTROL*

The neck restraint is a technique that allows the person who applies it to use only the degree of force that is necessary to control the subject. The amount of force needed can be increased or relaxed at will or as the situation requires. The following are the three distinct kinds or levels of control that can be achieved with the properly applied neck restraint.

*Level 1 - Mild Restraint*

In use the subject is held loosely by the neck with his balance broken to the rear.

This level of restraint is especially effective in breaking up fights or in preventing belligerents from getting at each other. Another common use is to physically prevent a subject

from leaving the scene of an incident. It also serves the general purpose of convincing a belligerent person who tries to resist that he can be easily controlled despite his opinion to the contrary.

*Level 2 - Medium Restraint*

In use the subject is held firmly by the neck with his balance broken to the rear.

At this level if resistance continues the neck is compressed until the nerve masses on both sides of the neck cause sufficient pain to mobilize the subject and prevent further resistance. This level of restraint is usually sufficient to control all but the most violent kinds of resistance since it proves to the subject that he cannot resist at will, but is in fact firmly restrained.

*Level 3 - Maximum Restraint*

In use the subject is held firmly by the neck and his balance is broken to the rear - as resistance continues past the nerve phase of level 2, the neck is scissored until the subject's carotid arteries have been compressed for a sufficient period of time to cause oxygen deprivation to the brain, usually 4 - 7 seconds average time, depending on the subject's resistance and the officer's technique proficiency. The restraint is released as soon as the subject is unconscious or he submits and is gently placed in a prone position with care taken to protect the head. If unconscious, the subject will revive in from 5 to 20 seconds without any assistance from the officer. The subject can be revived more quickly by lifting his trunk to a vertical position and slapping him in the small of the back with the palm of the hand. This is a commonly used practice in judo competition to revive unconscious players quickly.

This kind of restraint is particularly effective against enraged subjects who refuse to submit and cannot be handled

by any other means. It is also very effective against mentals who resist and who may possess tremendous limb and body strength that cannot be overcome by the average officer.

It has also been found to be very useful to smaller officers who are physically weaker than the subject who refuses to submit to their control attempts. In some instances the smaller officer may not be able to control an aggressive resistor [*sic*] with his hands in any other way.

Another and extremely vital reason that the neck restraint is important in police field work is that once it is properly applied to a subject the officer is relatively safe from assault and his weapon cannot be easily grabbed by an aggressive subject. If an attempt is made to obtain the officer's weapon, maximum force can be quickly applied and the subject will be rendered helpless in seconds.

*CONCLUSION*

As F.B.I. statistics show, more and more police officers are being assaulted and killed each year. In 1965, 53 officers were killed; in 1975, 128 officers were slain. With this rise in incidents of assault, police departments must provide more and better methods of protection for their members through training.

The use of the neck restraint is one such attempt to provide a safer control technique for both the citizen and the officer. One major strength of the neck restraint is that once applied it provides more protection to the officer than any other known method of control. It also concludes physical resist situations without injury to the subject faster than any other restraint means known.

Judging from the dozens of statements made to me by Academy graduate officers who have successfully used the neck restraint in physical resist situations in the field, I think it is safe to conclude that its use has been instrumental in

reducing the potential for injury to both officers and citizens. In many instances officers have stated that without the ability to use the neck restraint they did not know how they could have controlled the subject at all. Some officers said their only alternative in some situations would have been to use their baton or mace which, of course, involves a greater chance of injury to the subject.

If the assumption that the use of the neck restraint has been instrumental in reducing incidents of risk and injury to officers and citizens alike is true, then it follows that the elimination of the neck restraint as a method of control by officers will result in an increase in risk and injuries to officers and citizens alike in the future.

In view of the fact that this technique remains an acceptable method of winning in sport judo worldwide, I believe that it should continue to be used by the police officer to serve the far more serious purpose of aiding the officer in the safe performance of his duties and to help insure the safety of the citizens he serves. Of course, proper training and safeguards against its misuse should be rigidly enforced.

*SOURCE MATERIAL*

St. Louis Police Academy

Missouri Highway Patrol Academy

New York Police Department

Dr. E. K. Koiwai, leading authority on judo injuries

F.B.I.

ANNEX C

Attachment No. II - Letter from Missouri Highway Patrol

[Letterhead]

MISSOURI STATE HIGHWAY PATROL

April 20, 1977

Mr. James Tindell
Kansas City Regional Center for Criminal Justice
2100 North Noland Road
Independence, Missouri 64050

Dear Mr. Tindell:

In response to your request for information regarding our defensive tactics training, we do teach the "carotid choke" submission and come-along hold as part of our physical training program to basic police and Patrol trainees.

Sergeant Roy Bergman has discussed your questions with Sergeant Paul Corbin and Trooper Herbert Watchinski, our physical training instructors. They all agree that the carotid choke hold is most effective submission hold in the training program when properly applied and used.

We have no reports of injury to subjects on whom the hold was applied by our officers in defense or come-along situations. In fact, they agree that other types of holds, blows and force would be much more apt to cause injury to a subject than the carotid choke hold would cause when properly used.

Sincerely,

P. V. VOLKMER, Major
Chief of Staff Services
/s/ J. H. Dickson
J. H. Dickson, Captain
Training Division

## ANNEX C

Attachment No. III - Letter from St. Louis Police Academy

[Letterhead]

GREATER ST. LOUIS POLICE ACADEMY

April 21, 1977

Mr. Jim Lindell
Regional Center of Criminal Justice
2100 N. Noland Avenue
Independence, Missouri 64051

Dear Jim,

In regards to your inquiry concerning the teaching of choke holds (or techniques) in the Greater St. Louis Police Academy.

Please be advised that as the Self Defense instructor in this academy, I do teach and advocate the use of the Choke Hold. My reason being is that it is a safe and effective means to control a [*sic*] unruly person without seriously injurying [*sic*] them; as opposed to a night stick which could cut, cause bleeding and in some cases cause serious injury to a subject. It is the most effective way to control a person, who is having mental problems and becomes violent.

From all available medical data, I find no one who states that harm can be caused to a person because of being choked.

As you well know through our Judo training, we have both been choked out many times without any ill effects. Chokes have been taught and used by all Judo players since 1882, and I know of no one who was injured because of it.

If I can be of any help to you in the future, please contact me.

Respectfully,
/s/ Bill
William E. Laub
Self Defense Instructor

WEL:fh
cc: J. Seitzinger
J. Burke

ANNEX C

Attachment No. IV - Two Jail Incident Report

ARREST REPORT

Date 9-2-77. Time 2:[*illegible*].

Prisoner's Name — Linville, Roy Wilson. Race W; Sex M; Address later; D.O.B 8-21-[*illegible*].

Charge 26.131, Location of Incident — booking area; Time — 2230; Prisoner's Attitude — loud and combative.

Condition of Prisoner — drunk - bleeding from right side of head and right wrist.

Officers Present — PO R. Callahan, PO. T. Baum, DFO P. Miller.

REMARKS: At approx. 2230 the prisoner was brought to the detention unit; [*illegible*] the district officer who stated Mr. Linville was in a fight at 605 W 12th St. when he was arrested he fought the Police after he entered the jail he became loud and mouthy. He was booked and searched and R. Callahan attempted to escort him to be finger printed when he grabbed the Gos's [*illegible*] hand and attempted to eat them, they were removed from him and Linville began struggling with Callahan attempting to push into the pillars at the front gate. At that time officer Baum assisted Callahan subdue him and all three fell to the floor with Callahan and [*illegible*] then Linville and then Baum on top. Linville was then escorted [*illegible*] where he refused to be finger printed and become [*sic*] fighting again at time DFO Miller assisted Callahan & Baum in getting the print [*illegible*] later Linville complained he could not breath [*illegible*] he was sent to [*illegible*] where he refused treatment. Later D.F.O. Spanier stated that Linville while on the elevator coming into the

jail was complaining [*illegible*] could not breath [*sic*] if the neck restraints would have be used there would have no injurys to anyone.

P.C.M.D.
Reporting Officer.

R. Callahan

[Printer's note: this document is largely handwritten and is illegible to a significant extent.]

Form 8 P.D. (Rev: 11-58)

PRISONER'S INJURY OR ILLNESS REPORT

Name: Grapes, Viktor.

Arrest Report No: G237268; Charge 2613; Held for 8/25/77 0330.

*Description of Prisoner:*

Color W, Sex M, Age 19, Height _____, Weight _____, Hair Brn, Eyes _____.

Dressed: blue jeans.

Date Occurred: 7/29/77, Time 0400, Place 1125 Locust.

Means Used: Police baton.

Extent of Injury/Illness: cut on right side of head

At time injury or illness was observed or reported, victim was: (Check one)

Standing ✔ Sitting Lying on bunk On Floor .

Discovered by Wayne Wells; Reported by Wayne Wells.

Witnesses: Name_____ , Address _____ , Phone _____

Conveyance Ordered: Time 0400, Date 7/29/77.

Responded: Time 0400, Date 7/29/77.

Type of Conveyance: Ambulance Wagon ✔ Police Car .

Order by: Wayne Wells.

Officer in charge: Sgt. Mason, Ledger Officer PO [*illegible*].

Doctor in Attendance: Dr. Holcum, Treatment: Sutures in Head.

Admitted: Yes___ No_×_

Returned to Detention Bureau: Date 7-29-77; Time 0900 Type of Conveyance Wagon.

Received at Detention Bureau by: E. R. Martin

REMARKS: State in full apparent condition of prisoner when returned to Detention [*illegible*]: Normal.

Details of injury or illness on reverse side. Report all facts in logical sequence, showing any visible marks, bruises, cuts, etc.

Date of report: 7-29-77.

Wayne Wells
Reporting Officer

ARREST REPORT G24693.

Date: 7/29/77; Time: 0400

Prisoner's name — Viktor Grapes; Race — W; Sex — M; Address — unknown. DOB 9-17-

CHARGE 13; Location of Incident — 1125 Locust; Time — 0400; Prisoner's Attitude — had been drinking fighting.

Condition of Prisoner — [*illegible*] on right side of head.

Officers Present — W. Wells, G. Williams.

Remarks:

BRIEF DESCRIPTION OF ALLEGATION:

7/29/77 at approximately 0357 hrs. the reporting officer received a phone call from the South zone dispatcher who stated wagon 229 was in the basement of headquarters and needed some help with a couple of arrest [*sic*]. When the officers arrived in the basement the wagon was allready [*sic*] unloading — arrest, as the officers were opening the second door of the wagon the party listed above was found sleeping on the floor of the wagon with his hands handcuffed behind his back. The party had gotten sick and threw up all over himself, due to the mess the handcuffs were removed and the party washed off with the hose in the basement. When the officers were all finished the party struck officer Williams with his right fist, the party was then taken to the elevator by the officers and placed facing the [*illegible*] wall. As the party was standing against the wall officer Williams had [*illegible*] left hand holding the party up, the party swung around and attempted to strike officer Williams. At this time the party attempted grab my [*illegible*] baton. I had to take advaisive [*sic*] action to keep the party from taking [*illegible*] baton away from me. In the next few seconds the party attempted to strike and was struck once (1) with my department baton receiving a cut on his right side of his head. The party also had a cut above the right

eye prior his involvment with myself and officer Williams. The party was transported [*illegible*] Truman Medical Center for treatment.

[*illegible*] the neck restraint could have been used I feel the party would not have [*illegible*] subdued in such a manner

Richard [*illegible*]

Wayne Wells
REPORTING OFFICER

ANNEX C

Attachment No. V — Memorandum from Major Kimmis

MEMORANDUM

June 15, 1977

To: Lt. Colonel Charles *J*. Coughlin, Commander, Operations Bureau

From: Major Gerald A. Kimmis, City Wide Operations Commander, Watch

Subject: Neck Restraint — Sleeper Hold

On a past occasion while I was assigned as the City Wide Operations Commander, third watch, I responded to Menorah Hospital on a South Central Patrol Division officer who had received minor injuries trying to effect an arrest on a party who was to be charged with driving under the influence. When I arrived at the hospital, I contacted the officer's acting sergeant, Police Officer Hattaway, who informed me the injured officer, a black female whose name I cannot recall, suffered a scraped ankle in a scuffle with the person being arrested.

Officer Hattaway explained he was at the scene while the person who was being arrested, a large black male, had resisted. Officer Hattaway indicated the party had been subdued by the female officer through the use of a neck restraint hold and had probably saved both officers from injury since the arrested person was much bigger than either he or the female officer.

I questioned Officer Hattaway as to the size and attitude of the crowd that had gathered at the scene, since this was shortly after the incident at the recreation center on Prospect owned by ex-Chiefs' player Jim Kearney. He stated there had been no problem encountered which he attributed to the quick subduing of the suspect by the female officer. In fact,

the suspect's mother was at the scene and as far as I know, she was not hostile toward the police action taken.

This is the only incident that I am aware of where the neck restraint was used, but as far as I know, no injury resulted from it and in fact, its use may have prevented some injuries as well as adverse public reaction. Since the use of the neck restraint or "sleeper hold" was temporarily suspended by the June 13 memorandum from the Assistant Chief of Police pending further research and evaluation. I would like a copy of this forwarded to that Office for their information.

/s/ Major Gerald A. Kimmis
City Wide Operations Commander
Watch III

Assistant Chief's Office
Lt. Col. James Keiter

[Printer's note: this document is slightly illegible at the margins.]

ANNEX D

Attachment No. I — Recap of survey and copy of questionnaire

MEMORANDUM

January 19, 1978

TO: File

FROM: Officer Barbara Baker, Planning Unit

SUBJECT: Neck Restraint

A total of 91 officers completed a survey administered by Mr. James Lindell during three different sessions of in-service training. The survey was given to 25 officers on November 22, 1977; 34 officers on December 6, 1977; and 32 officers on December 13, 1977. A copy of the survey is attached. Attachment II of this annex contains statistical charts of the total responses with the number and per cent of each response.

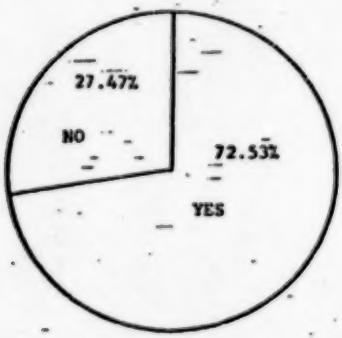
Officer Barbara Baker
Planning Unit

BB/jw

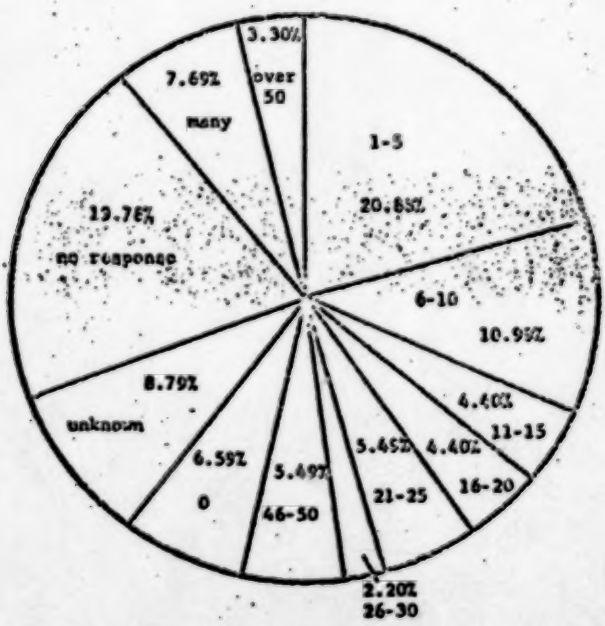
1. Have you ever used the neck restraint to control a subject? Yes ____ No____
2. Please indicate the number of times you have used the neck restraint to control subjects — how many times?
3. Have you ever rendered a subject unconscious with the neck restraint? Yes ____ No____
4. If the answer to number 3 was yes, how many different subjects?
5. Have you ever received instruction in the use of the neck restraint? Yes ____ No____
6. If the answer to number 5 is yes, how long ago?
7. Do you think the neck restraint is a needed police control tactic in aggressor/resistor [*sic*] situations? Please comment
8. Do you think that other police control methods are equally effective in aggressor/resistor [*sic*] situations? Please comment.

# ANNEX D
## Attachment No. II — Graphs of survey results

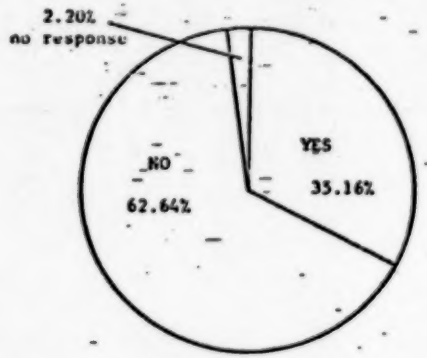
1. Have you ever used the neck restraint to control a subject?



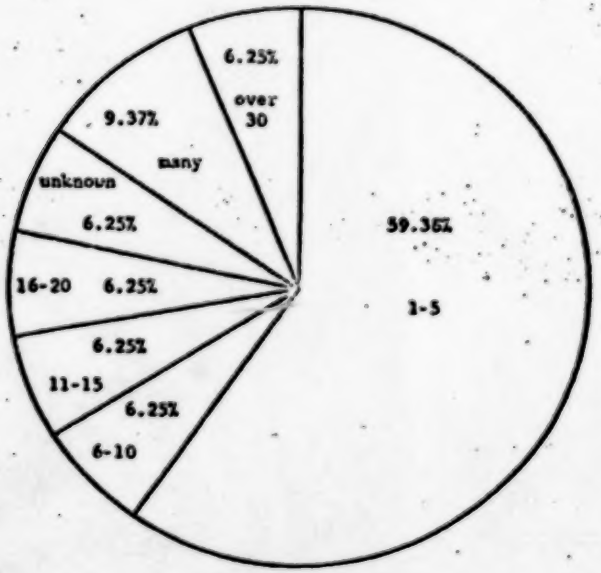

2. Please indicate the number of times you have used the neck restraint to control subjects - how many times?



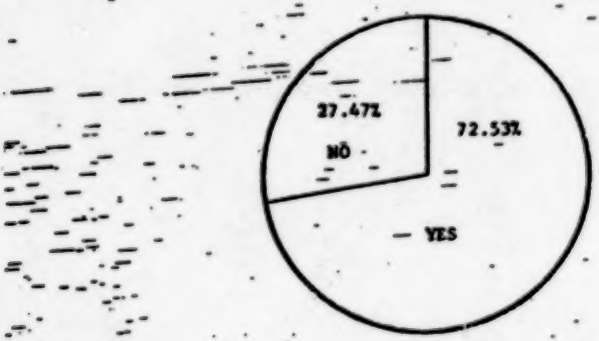
3. Have you ever rendered a subject unconscious with the neck restraint?



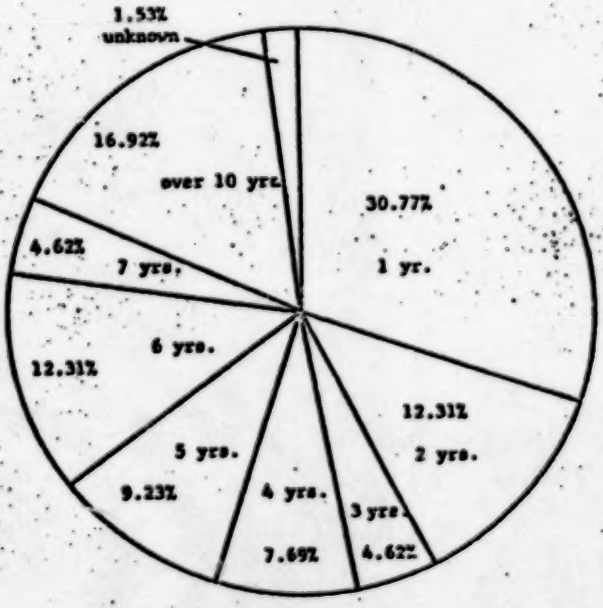

4. If the answer to number 3 was yes, how many different subjects?



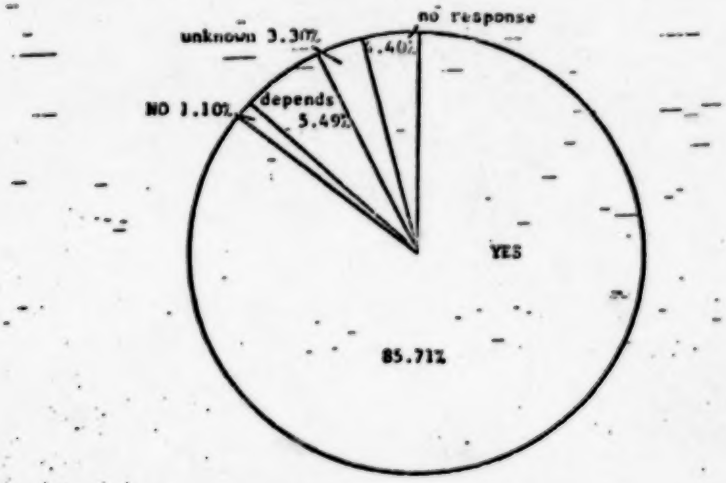
5. Have you ever received instruction in the use of the neck restraint?



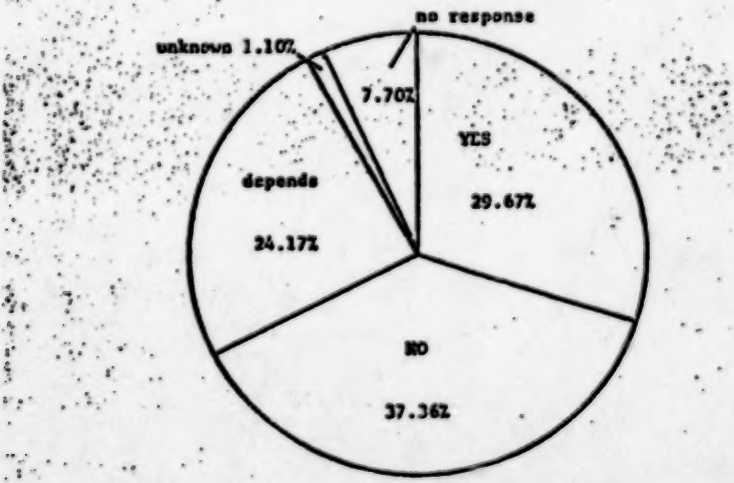

6. If the answer to number 5 is yes, how long ago?



7. Do you think the neck restraint is a needed police control tactic in aggressor/resister situations?




8. Do you think that other police control methods are equally effective in aggressor/resister situations?



## ANNEX E

Attachment No. I - Interview with Mr. Manfred Maier

MEMORANDUM

January 18, 1978

Interview: Mr. Manfred Maier, Department Legal Advisor

On December 13, 1977, the reporting officer talked with Mr. Manfred Maier. Mr. Maier was asked the following question: "If the neck restraint can cause serious injury or death, can we legally use it?" Mr. Maier stated, "We could use the neck restraint if the proper safeguards were taken and under the appropriate circumstances."

ANNEX F

Attachment No. I - Inquiries and Literature Search by Major Braden

MEMORANDUM

January 19, 1978

TO: File - Neck Restraint Project

FROM: Major Charles E. Braden, Commander, Operations Analysis Division

SUBJECT: Inquiries and Literature Search, re: Neck Restraint Project

1. The card catalogue at the main Kansas City, Missouri Public Library was accessed in an effort to find data on mortality probabilities associated with various types of trauma which might occur from use of alternatives to the neck restraint. The search proved negative.
2. An inquiry was made of the Marsh McClennan Insurance agency to determine if mortality data might be available from the insurance industry. I was referred to the Kansas City Public Library and the publications of the National Safety Council.
3. The book "Accident Facts, 1977 Edition," by the National Safety Council was reviewed but no useful information was found that would apply to the instant study.
4. Dr. Gary Johnson, a pathologist, was interviewed to determine if probabilistic information was available on various trauma. He could not identify any single easily accessible source and said that there was just too many variables associated with any such question.

5. Inquiries made of members of the Computer Systems Division, the Crime Information Unit and the Internal Affairs Division made it obvious that there is no way at the present of determining the number of instances where our officers use force of all types. Only the use of firearms is easily determined.

/s/ C. E. Braden
Major Charles E. Braden
Commander
Operations Analysis Division

CEB/jk

[Addendum 3 can be found at 41a-51a of the Petition for Certiorari.]

Addendum No. 4

INTRADEPARTMENTAL CORRESPONDENCE.

August 18, 1978

1.2

TO: Chief of Police

FROM: Director, Office of Administrative Services

SUBJECT: IN-SERVICE SELF-DEFENSE TRAINING

After reviewing the Department's needs for continuing training in self-defense techniques, the following program is recommended:

All sworn personnel engaged in field police duties will be required to participate in a four-hour intensive, in-service, self-defense proficiency course. This course will be given on a continuing basis to ensure that all such officers receive refresher training and qualification testing at least once each year.

Currently, the Department must meet the State Health and Safety Code requirement that all peace officers engaged in primary field duty receive cardiopulmonary resuscitation (CPR) training annually. It is recommended that CPR and self-defense training be consolidated into a single, *centralized* program consisting of both courses.

The centralized mode offers a higher level of control, quality and instructor expertise. The centralized training also provides for immediate implementation of new self-defense techniques by instructors who have already been trained. Of primary importance will be the fact that the centralized training will ensure that Department policies and procedures regarding use of force and control holds are strictly adhered to by the instructors.

The same rationale applies to the CPR training which is currently accomplished in a decentralized mode, but it has been noted that the level of instructor expertise and the methods of training and control differ greatly from Area to Area.

The course will consist of four hours each of self-defense and CPR training. An examination will be given to all participants to ensure that they are proficient in both self-defense techniques and CPR. Those participants who do not perform to the satisfaction of the instructors will be recycled and receive continual training until they are able to demonstrate proficiency to the satisfaction of the instructors.

All personnel currently assigned to field activities will be scheduled for this training program. Training Division will monitor the transfer of sworn personnel from non-field assignments to field assignments and ensure that immediate training is scheduled for these officers.

Due to the complexity of assignments by field personnel, officers of varying ranks and assignments will undergo the self-defense qualification course. The program will be designed to ensure that all officers and civilian personnel likely to engage in an arrest or custody situation will receive the training.

Based on an approximate figure of 6,000 personnel to be trained, 3,000 additional man days will be expended for self-defense training in this program annually. The personnel assigned to receive this training will be divided into training groups with each group assigned one day per deployment period to receive the training. Specialized divisions and units will be included with the smaller geographic Areas to comprise a training group. The instructors will conduct approximately 20 classes each, per deployment period, with each class made up of 19 to 20 students. This

ratio will provide for annual training of all personnel currently exposed to field activities and additional personnel who may be assigned to field activities.

The annual training requirement will be supplemented by In-Service I and In-Service II Schools and the Supervisory Development Course (Sergeants School). Approximately 300 officers receive four hours' self-defense training in the In-Service I School and an additional 150 officers receive four hours of self-defense training in the In-Service II School each year. Approximately 100 officers will receive three hours' self-defense instruction in the Supervisory Development Course. It also should be noted that approximately 185 hours are devoted to self-defense and physical fitness during the recruit training phase. Area Training Days, Training Bulletins and videotape instruction will serve as additional reinforcement to the Program.

It is anticipated that the four hours of annual centralized self-defense refresher training, supplemented by decentralized reinforcement, represents the minimum required to maintain basic proficiency in self-defense skills and should serve to reduce the level of injury to both officers and arrestees.

To implement the program it will be necessary to assign one over T.O. Sergeant I and one over T.O. Police Officer II to the Physical Training Unit at Training Division. Personnel cutbacks in Training Division do not allow the Training Division staff to absorb this additional work load without additional personnel. Training Division will also be required to conduct non-anticipated training of two Reserve Officer classes during this same time period.

At the present time, the cost of self-defense training is approximately $21,300 annually for in-service training. Each recruit officer processed through the Academy receives

185 hours of physical control and fitness training for an additional cost of $1,480 per recruit ($411,400 for 278 recruits in 1978).

The estimated additional annual cost to implement the self-defense portion of the training program is as follows:

| | |
|---|---|
| 6,000 sworn and civilian personnel .. | $250,000 |
| (1) Sergeant I instructor ..... | 25,000 |
| (1) Police Officer II ..... | 20,000 |
| TOTAL | $295,000 |

/s/ W. S. Harvey
W. S. HARVEY, Assistant Chief
Director
Office of Administrative Services

FOUR-HOUR SELF-DEFENSE
CPR REFRESHER TRAINING

| | |
|---|---|
| 0800 | Introduction — Use of Force — Verbalization |
| 0850 | Techniques Interrogation, Advantage Positions |
| 0900 | Pain compliance holds, searches |
| 0950 | |
| 1000 | Control holds |
| 1050 | |
| 1100 | Self-defense |
| 1150 | |
| 1150 | Lunch |
| 1230 | |
| 1230 | Introduction - Film "Pulse of Life" |
| 1320 | |
| 1330 | CPR Techniques - Lecture (Lesson Plan) |
| 1420 | |
| 1430 | Practicum - Resusi-Anne |
| 1520 | |
| 1530 | Examination and critique |
| 1620 | |

Addendum No. 5

[Letterhead]

CITY OF LOS ANGELES

March 8, 1978

Honorable Members of the Police, Fire and Civil Defense Committee

C.F. 78-477

Honorable Members:

At your meeting of February 23, 1978, your Committee heard testimony from physicians, officers of the Los Angeles Police Department, and others related to police use of force in subduing suspects. Your Committee's inquiry is in response to a Council motion (Farrell-Cunningham), which, as amended and adopted, requested an investigation into the policies of the Los Angeles Police Department relative to the use of physical force in subduing suspects. Your Committee requested this office to review the information presented and advise your Committee as to whether additional inquiry appeared necessary.

In the course of our inquiry we have reviewed the information presented at your Committee's hearing; discussed the matter with LAPD personnel; and have additionally surveyed some other major police departments to determine their policies in this matter. Inasmuch as your Committee placed considerable emphasis on the use of physical force specifically as it pertains to persons under the influence of phencyclidine (PCP, also known as "angel dust") we have included that emphasis in our inquiry.

We have refrained, upon advice of the City Attorney, as has your Committee, from discussing any specific incidents. We have also limited our inquiry to the use of physical force, specifically control holds, as a policy, and not considered what should be done when misuse results in severe injury or death. Your Committee has recently inquired extensively into police use of deadly force, and it is our feeling that a death or severe injury resulting from use of force

should be handled in generally the same manner as a death or severe injury resulting from the use of firearms. We understand that this is, in fact, how such situations are currently handled by the LAPD. We thus feel that followup investigations into incidents of misuse of physical force are beyond the scope of this inquiry.

*SUMMARY*

The LAPD's policy on the use of physical force in restraining suspects is based upon escalation of force. An officer will first attempt to gain compliance verbally, and, depending upon a suspect's action, react by escalating into firm grip control, pain-compliance holds, unconsciousness-rendering holds, self-defense techniques, and finally, use of deadly force. Each step is taken only in response to a suspect's actions, and de-escalation when a suspect complies is as important as escalation.

The Police Commission, at its February 28, 1978 meeting, considered a department report on the use of PCP, the department's attempts to control its use, methods of dealing with PCP users, a training bulletin on PCP, and re-emphasis of the escalation of force principle and the advisability of continuing to use the types of control holds currently used by the department. The department's development of control holds is based upon a number of prior studies which the department has conducted, concluding that there are no viable alternatives to the bar arm and carotid holds, in situations when forceful control of an aggressive suspect is indicated, but that training techniques in the proper use of these holds could be improved.

The effects of phencyclidine (PCP), which were discussed at length at your Committee's February 23, 1978 meeting, are summarized. PCP may cause a wide variety of dangerous reactions in users, some of which may render police control methods ineffective or dangerous to the PCP user. Hospital

techniques for dealing with violent PCP users include physical restraint and isolation, but these techniques may not be applicable or usable by police officers in street situations. Additionally, officers may have difficulty in diagnosing PCP use. While regular control techniques may cause difficulties or dangers to PCP users, there do not appear to be viable alternatives to their use. Our survey of a number of police agencies indicated that these departments generally utilized the bar arm and carotid holds, have generally not experienced problems with their use, and have no alternatives to suggest in dealing with PCP users.

We are not able to identify and document a compelling need for the LAPD to drastically alter its policies on physical force used to control suspects; however, research is continuing. We recommend that the LAPD continue its participation in this research and continue to implement improved procedures as they become available. We also recommend that the Department and/or the Commission review this report and the medical information available and offer any response they may have.

Since some of the physical control techniques have the potential for injury or death if misused, increased periodic retraining of officers, including possibly requiring officers to qualify in these techniques, should be considered. We recommend that the LAPD be requested to report, after a suitable interval, on the implementation of the PCP training bulletin and improved techniques mentioned in the recently-adopted report to the Commission, and that the report include further training steps that are being considered and the possibility of requiring officers to qualify in control techniques.

## *DETAIL*

### *LAPD Policies on Control Techniques and PCP*

At your Committee's February 23 hearing, an LAPD spokeman described the Department's philosophy in use of force in subduing resisting suspects. Police interaction with a suspect would begin with the officer using verbal directions to a suspect. If the suspect cooperates at that point, no escalation of the officer's effort would be required. However, if the suspect passively resisted the officer's directions (refusing to cooperate but not fighting or struggling) the officer would employ a firm grip, such as to the elbow, to attempt to secure cooperation. Again, if cooperation is forthcoming at this point, no escalation of the officer's efforts would be required. Should the suspect actively resist, however, further control would be necessary, including the possible use of pain compliance holds, of the bar-arm hold, or, if the suspect continued to struggle or fight, the possible use of the carotid hold, which is intended to induce unconsciousness by restricting blood flow to the brain. Should the suspect employ a weapon, it would probably be necessary for the officer to bypass control holds as a technique and employ other methods for self-defense and subduing the suspect, such as use of the baton or, if ultimately necessary, use of firearms.

It was emphasized by the LAPD spokesman that each escalating step used by an officer is in response to the suspect's actions. It was also pointed out that in a particular situation not all steps might be used; e.g. in response to an officer's verbal directions a suspect might attempt to use a weapon, and drastic measures might be required immediately. It was also emphasized that de-escalation, as a suspect becomes less aggressive, is as important as escalation.

At its meeting of February 28, 1978, the Board of Police Commissioners adopted a Police Department report on PCP (angel dust) to be used in replying to the Mayor's request for information regarding policies and practices regulating the apprehension of manufacturers, users, and dealers of PCP. The report describes the spread of PCP in the Los Angeles area and the Police Department response to this problem.

The Police Department report (attached) indicates that the popularity of PCP has increased tremendously in this area over the past three years. In responding to this problem the Police Department has placed its primary enforcement emphasis against illegal manufacturing and sales of PCP. Other Police efforts include implementation of education programs for citizens and Department personnel, establishment of a specialized team of experienced investigators, developing close liaison with other enforcement agencies having similar teams of investigators and participating with the Drug Enforcement Administration in establishing a joint PCP task force.

In dealing with PCP users the report indicates that persons under the influence of PCP come to the attention of the Police through citizen complaints or officers' observations of individuals exhibiting bizarre behavior. In such instances arrests are made employing "reasonable methods" best suited to the circumstances of each case. The report indicates that PCP users are unpredictable, dangerous, and prone to unprovoked violence. However, experts are unable to suggest new methods for controlling PCP intoxicants other than those currently in use by the Department.

Department policy for these instances, as well as for all cases where force is applied, has been formed as a result of continual review of arrest techniques. Physical force is used only to secure observance of the law or to restore order

when persuasion, advice and warning are found insufficient to achieve police objectives. The concept of "escalation/de-escalation of force" is applied. The physical techniques sanctioned under their concept include a firm grip control, the pain compliance holds, control holds, self-defense and baton techniques, and ultimately deadly force. The report further indicates that as a result of the particular type of violence exhibited by PCP users, the Police Department has developed a new hold — the modified carotid hold — which permits a humane, unconsciousness rendering capability should that prove necessary. The report concludes that these techniques are included in training and that additional control techniques and a new restraint device are under advisement.

The Police Department also submitted a PCP Training Bulletin (attached) which has been developed and will be distributed to further instruct Department members on recognizing the symptoms resulting from PCP use, understanding the sale and distribution system and the proper investigation of illicit laboratories. The PCP Training Bulletin does not, however, contain instructions on how to subdue identified and menacing PCP users.

In his presentation to your Committee, prior to the Police Commission's February 28 meeting, the LAPD spokesman noted previous studies conducted by the LAPD into the use of force and control holds. Although copies of these studies were not made available for our review, the following is a summary of their contents as reported to us by an LAPD representative.

Over the past 10 years the Police Department has conducted four major studies relative to the use of force and different control holds. These were in-house studies conducted by Ad-Hoc Committees. In the course of these studies various parties were consulted including members of the

medical profession, orthopedic surgeons, martial arts experts and representatives of the U.S.C. Medical Center and Camarillo State Hospital.

In 1970 a study was conducted into the use of control holds involving the neck and head. Specifically the use of four holds was reviewed. These are the "bar arm-choke" the "bar arm-non choke" the "carotid" and the "head lock." The study indicated that hospitals and similar institutions do not use these control holds since they have better methods — e.g. tranquilizer shots or greater numbers of staff — to subdue patients.

The study concluded that the four holds provide rapid, effective control. The alternative to the use of these holds would involve use of equipment such as the sap, the baton or the revolver. The study further concluded that the bar arm holds should be used only in preparation for the carotid hold. The study also identified the danger to the brain of a carotid hold applied for longer than three minutes. The study recommended that the teaching of these four holds should be continued.

In 1975 an in-house committee surveyed recruits on their knowledge of police powers and the use of force before and after training. The survey indicated that training was successful in teaching proper attitudes and proficiency relative to the use of physical force. The committee also surveyed a group of officers with 3-4 years on the job. It was discovered that this group had lost proficiency in the use of control holds and that the practice of the use of force escalated too rapidly. As a result of these findings the survey contains the following recommendations:

— establishment of remedial training programs to be used on an as-needed basis

— including self-defense training on team training days (one day every three months)

— developing video tapes relative to self defense which would be made available to be shown at roll calls

Another study in 1975 involved a survey of unconsciousness — rendering physical control holds with a view to finding suitable alternatives. Department as well as outside experts and orthopedic surgeons were consulted. Martial arts techniques were considered, however training in this area would require three years with continued practice. The survey concluded that no viable alternative exists to the four holds in question. The survey recommended as follows:

— the risk of injury in using the approved control holds should be stressed

— wrestling should remain as part of the training program

Finally, in 1977 an ad-hoc committee reviewed the matter of self-defense training with particular emphasis on a new technique, the "Coga" method, developed by a Police Department martial arts expert. In essence this method involves variations to existing holds and techniques including such elements as: Baton techniques, different positions and stances in relation to the suspect to allow for better advantage to the officer, variations on the wrist and twist locks, defensive kicks, emphasis on the carotid hold, use of the bar arm hold only to control and pull the suspect off balance to prepare for the carotid hold, variations on gun take-away methods, and elimination of the bar-arm-from-the-front control hold. The recommendations resulting from this review included the following:

— the use of force philosophy should be included in the training of superior officers

— decentralized training should be developed and conducted within each division and self-defense training coordinators should be established

— establishment of an illustrated self-defense training bulletin

— semi-annual testing of proficiency

Because of our limited research into the subject, and our lack of training and experience in this field, we do not believe we can raise any basic objections to the LAPD's "escalation of force" policy nor offer any major alternatives to it. What we can and have done, is to report our findings which are reinforced by our survey of other major police departments (to be discussed later in this report) which disclosed no major alternatives in general use elsewhere. We would certainly agree with the LAPD spokesman's statement that the escalation of force practice, even though the use of control holds may cause damage, is preferable to an immediate escalation to the use of deadly force.

Other questions have arisen from your Committee's inquiry, however, specifically as to the effectiveness of control techniques on suspects using drugs, especially PCP, and whether there are any alternatives to the use of the bar-arm and carotid holds, which apparently do have the potential for causing injury or death.

*Phencyclidine*

Your Committee expressed particular interest in the effects of the drug phencyclidine ("PCP", or "angel dust"), and the results of the application of physical control techniques to persons under its influence. Two physicians, Dr. Jokichi Takamine and Dr. Gloria Keyes, who have extensive experience with PCP users, advised your Committee at length on the physical and psychological effects of PCP and the difficulties in dealing with a person under its influence.

In brief summary, PCP is an easily-synthesized drug which is relatively new to "street" use; its use is, however, increasing rapidly. It is not legal except as anaesthetic for subhuman primates. The effects of PCP vary widely, appear erratically, and have vastly different results in different dosages, different persons, or even with the same dose in the same person at different times. It may cause euphoria, depression, hallucinations, convulsions, stupor, psychosis, uncontrollable rage, coma, and even death. Persons under its influence may become paranoid and react violently to any invasion of their body space. Virtually any stimulus may cause anxiety reactions. Persons using PCP may exhibit super-human strength. PCP causes anaesthetic/analgesic reactions (loss of pain sensation), which results in a person under its influence actually not feeling the pain of control techniques that a person would normally feel. It also causes an amnesic effect (loss of memory) so that a person under its influence might not remember commands or previous restraint efforts, or previous negative episodes. PCP may also cause airway restriction so severe that it is difficult to intubate users in a hospital; this effect is especially important to the use of neck-related holds in that the person may be very near asphyxiation already. Finally, it was noted that PCP may cause any or all of these reactions in anyone, not just in a person who already had such tendencies. Attached for your further information are several published articles on PCP.

The physicians testified that treatment of severe PCP reactions, aside from treating medical crises such as high blood pressure, coma, or asphyxiation, consists mainly of leaving the person alone in a safe place with minimum stimuli until the effect of the drug wears off. Unlike LSD or other psychedelic drugs, it is neither effective nor safe to attempt to "talk the person down." They also testified

that, because of the dangers to PCP users, any form of "choke hold" should be absolutely forbidden. In a hospital situation, violent PCP users may be restrained mechanically, such as wrapping the person in sheets or strapping the person in a gurney, and also by trying not to get them too excited.

The physicians did note, however, that the situation and the options facing hospital personnel are different than those facing a police officer in a street situation. It is obviously inadvisable to simply leave the person alone in a street situation. Suitable mechanical restraints, and the number of persons to assist in using them, may not be available. The necessity of restraining a person to avoid danger to himself, officers, and the public may override the desirability of not exciting the person. Spokesmen for both the LAPD and the Police Protective League stressed the difficulties facing officers in the field, who are not doctors, who may have difficulty even knowing that the person is under the influence of PCP, and who may not have assistance or equipment available. As previously stated, the LAPD has adopted a training bulletin regarding PCP.

*Policies of Other Police Agencies*

Since the LAPD maintains that no viable alternatives to the use of the bar-arm and carotid holds currently exist, even considering the dangers of these holds in the case of PCP users, we contacted a number of other police departments to inquire if these departments had any alternative policies or findings to offer. We posed the following questions:

1. Are the "bar arm hold" and the "carotid hold" permitted by your Department?
2. If they are permitted, have you experienced significant problems with their use, especially injury to suspects?

3. If these holds are not permitted, what restraint holds does your department rely upon to restrain physically aggressive suspects?
4. Restraint or control holds relying upon causing pain may be ineffective with suspects who have taken drugs, such as PCP, which have an anaesthetic effect. Has your Department developed alternative methods of restraining suspected PCP or other such drug users?
5. If so, what success have you had with these alternate methods, both in training officers and in the results of using them?

The agencies contacted and the summarized replies are attached to this report. There were no answers to question #5 since none of the agencies contacted answered question #4 affirmatively. The basic results of our survey show that, generally, other police agencies permit the use of the bar arm and carotid holds, have not experienced significant problems with their use, and do not have alternatives to their use, even in the case of suspected PCP users. Use of the bar arm hold is not permitted in Santa Monica and "not recommended" in San Jose; injuries to suspects were noted in Long Beach. Use of the carotid hold is "not recommended" in Fresno and not permitted in Philadelphia; its use has been suspended in Kansas City pending investigation because of an incident of injury to a suspect. Two departments suggested the use of the "gang-up" approach (subduing by a large number of officers) to PCP users but another department suggested that this approach resulted in more injuries to officers. San Francisco specifically recommended a one-on-one approach.

A physical training instructor on the staff of the Kansas City Police Department provided us with considerable dis-

cussion of control techniques, which is attached for your information. This material basically supports the use of the bar arm and carotid holds.

*RECOMMENDATIONS*

1. We are not able at this time to identify and document a compelling need for the LAPD to drastically alter its policies on physical control of suspects. We base this observation on our research, the support by other police agencies of the same general policies in use by the LAPD, the apparent lack of viable alternatives to the methods used by the LAPD, and the difficulties of dealing with PCP users in street situations. We do not mean to imply, however, that the exact *status quo* is necessarily the best possible approach. Research is continuing in the medical and police professions in control techniques generally and their application to PCP users.

We therefore recommend:

a. That the Police Department continue its participation in research in this subject, and continue to implement improved procedures as they become available.

b. That the Police Department and/or Police Commission be requested to review this report and the available medical information, and offer any response they may have.

2. Although the LAPD's policies on the use of force do not appear in need of drastic revisions, we note comments in the Department's studies and material on the need for upgraded training in the use of compliance and control holds. For example, the bar arm and carotid holds are intended to be safe when applied correctly. However, the bar arm hold can cause choking or laryngeal damage if applied incorrectly and the carotid hold may cause irreversible brain oxygen starvation if applied for too long a time. The LAPD

does train its officers in the dangers of misuse of these holds. However, since these holds have potential for damage or death if misused, more frequent periodic retraining may be desirable. It might also be desirable to treat these holds as skills in which officers must periodically qualify, in the same manner as the use of firearms. This approach is used in at least one other jurisdiction that we contacted in our survey.

We therefore recommend:

a. That the Police Department be requested to report, after a suitable interval for implementation and evaluation, on the effects of the newly-adopted training bulletin on PCP and on the improved control techniques and devices mentioned in the report adopted by the Police Commission on February 28, 1978.

b. That the Department include in that report further training steps or control techniques that are being considered for implementation, including the possibility of requiring officers to qualify in control techniques.

Respectfully submitted,

/s/ Ken Spiker

Ken Spiker

Chief Legislative Analyst

[Letterhead]
TRAINING BULLETIN
*Volume X, Issue 14* *May, 1978*

# PHENCYCLIDINE (PCP) PART I

This series of training bulletins has been produced to provide an indepth discussion of the drug Phencyclidine (PCP). Part I will discuss the use of PCP, the objective symptoms and effects the drug has on users. Part II of this series will provide instruction for conducting preliminary investigations of suspected PCP laboratories.

Classified as a controlled substance by the California Health and Safety Code, Phencyclidine (PCP) is the fastest rising abused drug in the Los Angeles area. Consequently, PCP abuse has created numerous enforcement problems for personnel of this Department. Many of the conventional methods for handling persons under the influence of a narcotic or dangerous drug have proven ineffective in cases of PCP intoxication. Several instances of officers sustaining serious injuries during contacts with persons under the influence of PCP have been recorded.

Historical Overview

In 1957 a pharmaceutical manufacturing firm synthesized PCP as a nonnarcotic, nonbarbiturate, intravenous administered anesthetic agent. The clinical trials with humans were discontinued in 1965 when extreme reactions to PCP intoxication such as agitation, excitement, disorientation and hallucinations were evidenced.

During the last decade, PCP has been legally available only to veterinarians as an anesthetic or tranquilizing agent for animals. PCP first appeared as an illicit street drug in 1967, primarily in the San Francisco area, as tablets called "PeaCe Pills." As abuse of the drug spread throughout California, PCP began to appear in numerous forms under various street names. Today it is quite common to see PCP in liquid, power and crystal forms or sprinkled on mint leaves. Contemporary street names for PCP include: angel dust, rocket fuel, elephant tranquilizers, trank and ozone.

In the early 1970's, PCP was still a relatively unknown drug. It was determined that certain popular street drugs which were being passed off as THC or cannabinol, for example, were in actuality PCP. Consequently, numerous individuals had been using PCP for quite some time without realizing it. Between 1972 and 1974, there were in excess

of 30 different types of street drugs, which, when analyzed, indicated contents of PCP. This misrepresentation of PCP continues today.

The Effects and Symptoms of PCP Intoxication

The effects of PCP on the central nervous system are unique and varied. PCP may act as a stimulant with low dosages; but, higher or cumulative doses of the drug will act as a depressant. It is these diverse reactions that cause PCP to be placed in a class of its own; neither a stimulant, depressant nor a hallucinogenic.

The various possible reactions to PCP intoxication preclude a listing of objective symptoms that will occur in all cases, however, following is a list of indicators of possible PCP intoxication.

Vital Signs

* The respiratory rate is normal or slightly increased
* The blood pressure is increased
* The pulse rate is increased

State of Consciousness

* Responsiveness — unresponsive to verbal stimuli: initially incommunicative, later incomplete verbal responses followed by talkativeness. Unable to feel pain.
* Orientation — disoriented for time and place, appearing confused and fearful.
* Behavior — may be agitated, excited, combative, self-destructive or bizarre.
* Speech — slow, slurred, groaning, or repetitive. May be mute or intermittently unable to speak.

Eyes

* Eye Lids — eyes open with a blank stare.
* Nystagmus — an involuntary, rapid movement of the eyeball, when the individual looks to the extreme; right or left, up or down.
* Pupil Reaction — sluggish reaction to light in higher dosages.

Motor System

* Coordination — unstable, high stepping.
* Muscle Tone — rigidity may be present.
* Movements — restlessness, repetitive movements, facial grimacing.

Additional Symptoms

* Increased secretion — salivation, drooling and tearing.

The symptoms vary with each individual depending on the dosage, frequency of use and the individual's metabolism. One symptom that will appear in most cases of PCP intoxication is nystagmus. Nystagmus is the involuntary, rapid movement of the eyeball, when the individual looks to the extreme; right or left, up or down.

There are other symptoms that may be displayed by a person under the influence of PCP, as indicated in the foregoing list. Most commonly, a person will appear to be agitated, excited and/or disoriented. Additionally, the individual may display one or more of the following symptoms: physical strength well beyond normal capabilities; muscle rigidity; the appearance of being in a stupor or a coma; or psychotic behavior such as paranoia, delusions, bizarre behavior, hallucinations or self-destructive action. The user may be noncommunicative, have a "blank stare" or be unable to feel pain. The individual will often drift in and out of an amnesic state, unable to remember what occurred in the recent past.

PCP can act as a catalyst in persons who have mental or physical problems. Persons who have, heretofore, successfully suppressed mental disorders often react in a bizarre manner, having the appearance of schizophrenic paranoia behavior. PCP can also induce epileptic-like seizures.

In one recent hospital study, 62 percent of the chronic PCP users tested exhibited bizarre, unresponsive or violent behavior. In certain cases of apparent respiratory failure, medical examiners have found the cause of death to be a result of PCP intoxication. These same medical examiners have discovered that PCP also can cause death by what is termed as behavioral toxicity. Behavioral toxicity is defined as intoxication to such a degree the user becomes disoriented to a point of engaging in behavior that causes self-inflicted serious injury or even death. Examples of this behavior might be: an expert swimmer diving into a swimming pool but failing to swim; a person who makes no effort to escape from a burning room; or an individual who inexplicably walks in front of a moving vehicle. While the resulting death or injury, in each instance, may be listed as accidental, behavioral toxicity from PCP is a direct cause.

Department personnel should refer to a previously published Training Bulletin, "Control Holds, Part II," Volume X, Issue 13, May 1978. The "Control Holds, Part II" bulletin discusses the advantages of the carotid control hold over the bar arm control. As discussed earlier, individuals under intoxication of PCP are unable to feel pain, therefore, some compliance holds such as the bar arm control hold may prove ineffectual.

The Duration of PCP Effects

Although the effects of PCP will vary greatly depending on the dosage, frequency of abuse and the individual's metabolism, as previously discussed, the following will provide a guideline for the duration of these effects.

> If a person took two inhalations from a PCP cigarette, the onset of the effects would occur in one to five minutes. The effects would peak after 15 to 30 minutes.

The effects will dissipate within four to six hours and normally will return within 24 to 48 hours.

This guideline of effect also applies when PCP is administered through the nasal passages, however, the onset of effects are accelerated and will occur in 30 to 60 seconds.

PCP will remain in an individual's system for an extensive period of time. Consequently, the frequency of ingestion is of paramount importance. Studies have been conducted on chronic users who have ingested PCP three or more times a week, for a period of at least six months. These studies have shown that, after use of the drug is discontinued, users experienced lingering problems with speech, memory, concentration and abstraction for several years. They also continued to experience periods of bizarre, violent or amnesic behavior.

Identification of Phencyclidine

PCP was originally available in pill form, however, it commonly is sold today in a crystalline, power or liquid form. A substance suspected to be PCP can generally be detected by its distinctive odor. The process of manufacturing PCP requires numerous chemicals, including ether, which is the strongest identifiable odor present. The mere presence of the odor of ether is a preliminary indication the substance could be PCP.

The following is a list of the most common forms of PCP found in the Los Angeles area.

Crystalline

PCP crystals will be found packaged in zip-lock baggies, hermetically sealed in plastic or wrapped in aluminum foil bindles. Crystals can be inhaled through the nose or sprinkled on another substance and smoked. The street price is $600 to $800 per ounce.

Tablets

The popularity of PCP tablets, or "Peace Pills," appears to be diminishing in the Los Angeles area. The tablets are usually pale yellow or pink in color, and are similar in size and shape to saccharine tablets. The street price is approximately $2 to $4 each.

Liquid

PCP in liquid form is generally a clear solution found in pint size jars. Liquid PCP is most often mixed with a leafy substance which, when dried, produces "angel dust." Liquid PCP may be injected, however, this practice is rather, as yet, uncommon. A pint of liquid PCP sells for $800 to $1,100.

Commercial Cigarettes

PCP has been used to adulterate commerically manufactured cigarettes, usually by dipping the cigarette in liquid PCP. "Kools," "More" and "Sherman" are brands most commonly used and have sold for as much as $20 per cigarette.

Methods of Storage

There are differences of opinion concerning the storage of PCP in a damp or cool environment. Many persons who have been arrested for possessing PCP, state the substance will lose its potency if subjected to heat for an extended period of time. There are others who disagree. Regardless of the potency theories, it is accurate to state PCP will remain moist and damp if refrigerated and this will increase the profit margin when sold in quantities by weight. When searching locations for PCP, officers should pay particular attention to refrigerators, freezers, storage chests and other areas where the temperatures would remain cool and constant.

## Analogs of Phencyclidine

An analog of PCP is a compound which has a chemical composition and structure similar to that of PCP. At present, there are two analogs of PCP that have been observed in Los Angeles area.

The first is a green crystalline powder called ketamine. Ketamine is a legitimate surgical anesthetic currently used on very young or very old patients. The drug is being diverted to the illicit market and sold on the streets under the name "green."

The second analog is pyrrolidine, called PCPy or PHP. The analog drug usually appears in the same forms as does PCP. Clinical tests of pyrrolidine, on animals, have produced the same results as tests with PCP. Because the two drugs produce similar test results and have similar chemical structure, it is safe to assume the objective symptoms will be the same.

Ketamine and pyrrolidine currently are not controlled substances under the provisions of the California Health and Safety Code and may be legally possessed.

## Summary

Phencyclidine (PCP) is an illicit drug which produces unique and varied effects. The abuser's individual metabolism, amount of dosage, and frequency of use will cause reactions normally associated with stimulants and depressants. PCP can produce changes in an individual's vital signs, as well as bring about unusual and bizarre behavior. Persons ingesting the drug may display physical strength well beyond normal capabilities linked with possible psychotic behavior such as: paranoia, delusions, hallucinations or self-destructive action, compounding abnormal physical behavior and irrational mental processes into potentially dangerous consequences.

Part II of this series on Phencyclidine will provide instruction and guidelines for conducting preliminary investigations of suspected PCP laboratories.

[Letterhead]
TRAINING BULLETIN
*Volume X, Issue 15* *May, 1978*

**PHENCYCLIDINE (PCP)**
**PART II**

**ILLICIT LABORATORIES**

In the past few years, there has been an ever-increasing number of incidents involving illicit laboratories in the Los Angeles area. The purpose of this bulletin on illicit laboratories is to provide Department personnel with information and instruction for conducting preliminary investigations of PCP laboratories. Although this bulletin will refer primarily to phencyclidine (PCP) laboratories, the procedures and guidelines have application to all illicit laboratories. These would include illicit manufacturers of PCP, methaqualone (quaaludes or ludes) or any other chemically produced drug. Part I of this series of bulletins discussed the use of PCP and describes the objective symptoms and effects the drug has on users.

The presence of illicit laboratories has created a hazard to citizens, police officers and firemen. It has become almost commonplace for these laboratories to explode and burn, causing personal injury to bystanders and extensive property damage. When basic guidelines and procedures are followed, an investigation can be effectively conducted with minimal risk to officers.

Overview

The primary reason for the rise in the number of clandestine laboratories is the increased popularity of the drug PCP. The chemical compound is easily manufactured with a basic understanding of chemistry, the purchase of a few chemicals and necessary hardware. The laboratory does not require sophisticated equipment to operate. Illicit laboratories have been discovered in remote ranches and multiple-unit apartments. Seized equipment has ranged from sophisticated commercial laboratory hardware to trash containers and hot plates.

The financial gains derived from the illicit manufacture of PCP are considerable. An initial investment of $2,000

to $3,000 can yield $20,000 to $30,000. The potential for enormous profits has led to the proliferation of illicit laboratories in all parts of the City.

The Dangers of Illicit Laboratories

It is imperative that Department personnel understand the inherent dangers surrounding any laboratory investigation. The chemicals used are often extremely toxic and may be highly volatile. For example, many laboratories contain the chemicals potassium cyanide and hydrochloric acid. These chemicals, when combined, produce a lethal gas which is identical to the gas used in San Quentin's gas chamber. When a fire erupts, the burning chemicals will produce extremely toxic fumes. The inhalation of certain fumes or prolonged exposure to some chemicals can cause poisoning.

An additional danger from fire exists when dealing with chemicals. A spark or inadvertent chemical mixture could cause an explosion or fire. Unless an emergency exists, there is no valid reason for an officer to enter an illicit laboratory, unless accompanied by a Department chemist or by personnel qualified to deal with these types of investigations.

Procedures for Handling Hazardous Chemicals

When personnel of this Department become aware of a laboratory containing hazardous chemicals which are toxic, corrosive or flammable, the Criminalistic Section, Scientific Investigation Division (SID) shall be notified immediately.

When notified of a seizure of suspected hazardous chemicals, a specialist from SID shall respond to the scene and determine the hazard posed by the chemicals. When conditions permit, samples and photographs of the gross amount of the chemicals will be obtained. Arrangements will be made for the disposal of any quantity of the chemical which cannot be safely stored.

NO ATTEMPT SHALL BE MADE TO NEUTRALIZE, MOVE OR TRANSPORT ANY HAZARDOUS OR SUSPECTED HAZARDOUS CHEMICAL, EXCEPT UNDER THE DIRECTION OF A SPECIALIST FROM S.I.D. OR QUALIFIED EXPERT.

Detection of Illicit Laboratories

Department personnel may become aware of the existence of drug laboratories through a variety of means, one of which may be a radio call "Meet the Fire Department." Upon arrival to the scene of an explosion and fire, the officers are informed that the cause was a probable chemical explosion and the fire has been controlled. It is now the officers' responsibility to protect the scene and preserve

evidence. If it is determined that an illicit laboratory does exist, officers should notify the Criminalistic Section, SID. Once the scene is secure, officers should attempt to interview neighbors to determine occupancy of the building. Particular attention should be made to vehicles parked in the vicinity. License numbers should be recorded.

*Note:* Only qualified personnel should enter the laboratory. Curiosity of unauthorized persons can only result in contamination of the scene or possible injury.

The presence of an illicit laboratory may be discovered through a citizen's complaint or an officer's observation. The process of manufacturing, or "cooking," PCP produces a strong and offensive odor, which in turn may generate complaints from neighbors. Thorough interviews of complaining citizens or other neighbors will usually provide probable cause to believe an illicit laboratory is in operation. During the interview, personnel should determine if certain indicators of an illicit laboratory are present.

The following are the most common indicators of an illicit drug laboratory:

1. Usually, because of the danger of fire and the presence of toxic fumes, no one will actually live at the location. The laboratory operator will only periodically visit the location.
2. Attempts will have been made to seal the doors and windows in an attempt to conceal the strong odor.
3. The operator may, depending on the location, install large ventilation fans to disperse the fumes.
4. The delivery to the location of 55 gallon steel drums, by a chemical company or common carrier.
5. The delivery of inordinate amounts of ice to the location. (Ice is required for the cooling process during cooking.)

6. A strong, distinctive odor of ether may be noticeable. If questioned, the operator will frequently indicate the odor is from a legal activity of plastic manufacturing or photographic developing.
7. The location is sparsely furnished.
8. The neighbors notice that the operator appears to exit the location solely to get fresh air or to have a smoke.
9. The neighbor or a friend has been inside and observed a laboratory in operation.
10. The operator may dump chemicals in the yard, causing destruction of plant life.

The presence of these indicators may substantiate the belief that an illicit laboratory has been located. This, however, is not enough for an arrest. There must be specific chemicals inside the laboratory and the intent to manufacture PCP must be established. This will require an extensive follow-up investigation. If a low profile is maintained, with a minimum show of uniformed officers, there is a strong possibility the laboratory operator may be unaware of detection. Officers at the scene should establish a point of surveillance and contact the Area narcotic officer-in-charge for advice and direction.

If the Area narcotic unit cannot be contacted, officers should notify the Narcotic Information Network (NIN) Detail of Administrative Narcotics Division at extension 3835. NIN will determine if an investigation is already in progress at the particular location, and assist in contacting the appropriate experts or directing the present investigation.

Laboratory Chemicals

The following is a list of chemicals normally found in an illicit laboratory:

| | |
|---|---|
| Cyclohexanone | Hydrochloric Acid |
| Piperidine | Bromobenzene |
| Sodium Metabisulfate | Magnesium Turnings |
| Anhydrous Ether | Iodine Crystals |
| Sodium Carbonate | Petroleum Ether |
| Potassium Cyanide | Phenyl Magnesium Bromide |

*REMEMBER:* THE UTMOST CAUTION SHOULD PREVAIL WHEN PERSONNEL COME IN CONTACT WITH THESE CHEMICALS. THE COMBINATION OF POTASSIUM CYANIDE AND HYDROCHLORIC ACID PRODUCES LETHAL TOXIC GAS. PHENYL MAGNESIUM BROMIDE WILL EXPLODE WITH THE ADDITION OF ONE DROP OF WATER.

Additional items that may be found in the laboratory are:

| | |
|---|---|
| Powdered milk (not milk sugar) | Acetone |
| White gasoline | Mint leaves or other leafy substance |
| Glass beakers or other sophisticated equipment | Enamel covered containers — 20 to 30 quarts |
| Five gallon gasoline cans | Electric Skillet |
| Lye | Plastic trash bags |
| Large ventilation fans | Plastic zip-lock bags |

Summary

Clandestine drug manufacturing is on the increase and the trend is likely to continue as long as the popularity of these illegal drugs continue. The illicit laboratory poses an extreme danger to the community in which it has been established. The dangers of toxic fumes, chemical explosion and fire cannot be over emphasized. Unless an emergency situation exists, there is no valid reason for an officer to approach or enter an illicit laboratory. If Department per-

sonnel conduct preliminary investigations as outlined in the foregoing bulletin, minimal risk to personnel will be accomplished.

September 26, 1978.

Before the Board of Police Commissioners of the City of Los Angeles.

In the Matter of the Approval and Transmittal of Response to the City Council's Recommendations on the Use of Physical Force.

PROCEEDINGS

COMMISSIONER REINHARDT: Item 5 I, the response to the Council's request for information concerning the use of force.

There is a report that's been prepared by the Department that is before the Commission. There are a number of people here today who wish to speak to this subject.

Chief, before calling people to speak, do you wish to make a report or have someone from the Department make a report, first?

CHIEF GATES: We can. Perhaps you'd like to just go into hearing from those —

COMMISSIONER WILLIAMS: I think I'd rather hear from the Department first.

CHIEF GATES: Chief Harvey.

CHIEF HARVEY: This is Sgt. Legarra from the Training Division, the head of the Physical Training Unit at the Academy.

This matter has been presented several times now before the full Council. And on motions by members of the Council, there was, as one major part of the discussion, a request — or, at least, a motion for a request that the Board of Police Commissioners consider a moratorium on the use of the bar arm control hold. Coincidental with the discussions were many points raised concerning the use of PCP and,

incidentally, our control of subjects under the influence of PCP.

The major point — that is, the request to impose a moratorium on the bar arm control — was defeated in the Council. And, instead, the Council adopted a resolution requesting that the Police Department examine — continue to examine the use of control holds and continue to research and develop alternative — in effect, just continue to review the subject.

You have before you a response to the questions put forth to the Board of Police Commissioners by the Council and responded to by the Department. That is, what has been the recent developments, what kind of research have we been doing, and what other changes are we considering in the use of force in its entirety, but, more particularly, with the use of the bar arm control hold.

If you'd like, I could go through the points one by one, if that's your desire, sir.

COMMISSIONER REINHARDT: I think it might be helpful, particularly since some people may be commenting on present practices, if you are able to just summarize briefly the changes that have been made and the other alternatives that are presently being pursued and what's happening with respect to training, for example.

CHIEF HARVEY: Well, a number of changes have occurred, if I may, within the last six months. There has been, probably most importantly, a complete Department-wide training on the use of force as a general subject. All members of this Department — all sworn members of this Department have gone through a training session on the use of force, have gone through what we call the escalation-deescalation approach to the use of force, and also a segment of that training had to do with the shooting policy.

In addition to that, there have been training bulletins developed on the control holds and disseminated to all members of the Department. There have been training bulletins developed on PCP and its effect upon subjects. There have been training bulletins developed on another — well, not exactly new, another expanded use of a device, the cord cuff leg restrainer.

There has been, under the direction of the Chief, a new training program — a refresher training program developed to once a year qualify each field officer involved in field-related activities in the control holds to put him through a refresher course and to have them examined as to their ability to administer these holds.

There's an experimentation going on right now in 77th Area on a new restraining device that is a leg restrainer. We're looking into it. And there are some preliminary favorable results on the use of the leg restrainer in transporting a violent or mentally ill subject. Let's see what else.

Those are the major things. In addition, one other thing we are looking into — as we have noticed some of our officers, in dealing with subjects under the influence of PCP, we've noticed that there are techniques, or there are methods of approach that can be used in somewhat talking them into custody — sweet-talking them into custody rather than approaching a subject directly, rather than restraining him once he becomes emotionally aroused or excited. Some of our officers throughout the city have experienced other approaches, other techniques, of really calmly talking these people into custody.

And one particular sergeant in Hollywood has a somewhat formalized program. And we are looking at that as to its applicability for city-wide use and as to a training bulletin

on another approach on how to handle mentally excited subjects.

I think those are the major points that I can recall we have gone into. One bottom line is that we do need a wide range or wide approach — variety of approaches in how to deal with subjects and deal with arrestees. And one part of that training involves the use of force. It is inevitable that in some circumstances there will be escalation of violence. And there will be a need for, not only the persuasion — verbal persuasion, but there will be a need for it on some occasions — the use of control holds, the use of pain compliance holds, the use of carotid, modified carotid, or bar arm control techniques. There will be occasions for the use of the baton. And, hopefully, in many, many fewer instances; it will be even more violent confrontations.

I think that what we have had to say, we cannot have the use of the bar arm t[illegible]n away from us or from our officers, because to do so actually will result in more injuries. It will escalate the violence into the use of the baton or the use of the firearm. That wide range of alternatives needs to exist, unfortunately. So we would oppose any moratorium on the use of the bar arm control.

COMMISSIONER REINHARDT: To be clear about the changes that have occurred to make certain the Commission and others understand is that, as I read the report, you have instituted a new program of training in self-defense techniques which now require certification, in effect, both through practical application and written examination. So that this is somewhat similar to what we have always had with the use of firearms. The people have to demonstrate their proficiency and that everyone will be tested in the use of those holds and qualified or certified by the end of the year. And then there will be similar training and testing on an annual basis.

CHIEF HARVEY: That is correct, Mr. President.

COMMISSIONER REINHARDT: That is a newly instituted program.

CHIEF HARVEY: It hasn't started. We expect next deployment period, next month.

COMMISSIONER REINHARDT: The next question I had was on the modified hold. That was a modified hold that was instituted this year, also?

CHIEF HARVEY: Yes, sir.

COMMISSIONER REINHARDT: How does that differ from the previously utilized hold?

CHIEF HARVEY: Well, it's — basically, it's not an unconscious rendering hold. It's a hold applied, as are the others, to control a subject. Essentially, all these holds are designed to just exercise enough restraint so that the subject can be restrained, handcuffed, and controlled.

Now, the carotid and the bar arm control are unconscious rendering holds. The modified carotid involves placement of the arm in a position on the neck where, if it can be held properly and if it can be not slipped and if it isn't required to go on to an escalated use of force, it's not an unconscious rendering hold. It merely restrains the subject until he either submits or until the handcuffs can be applied.

COMMISSIONER REINHARDT: This is a hold which, if successful, would avoid the necessity to utilize the carotid or the bar arm.

CHIEF HARVEY: That's right.

COMMISSIONER REINHARDT: Have you had any experience with the use of the modified carotid hold since it's been instituted?

CHIEF HARVEY: Yes, I am sure we have. I would like to ask Sgt. Legarra, who does review all the altercations

within the City, to comment upon that. I think he can better answer that.

SGT. LEGARRA: In the use of the modified carotid, it's basically the initial control hold where, with the application of that hold, the officer can in many situations gain control of a combative suspect before having to escalate either to the bar arm or the carotid control hold. The mere application of this hold in many situations will allow an officer to control the subject and from there go into a handcuffing situation. I read all the altercations reports that are written on the Department, and the hold has been used.

We have been teaching it at the Academy since February of this year, and we've put through six classes in that period of time. So we have six classes of officers out there in the field that have been taught this particular hold.

COMMISSIONER REINHARDT: When the training program you mentioned is instituted, does that mean that the rest of the members of the Department will then receive training in that modified hold also?

SGT. LEGARRA: Yes, sir.

COMMISSIONER REINHARDT: Commissioner Williams.

COMMISSIONER WILLIAMS: Chief, you talked a little earlier about the escalation of the use of force, and that suggests that the current and past Departmental policy with respect to the use of force prescribes various levels of the use of force to bring a person into custody. Would you describe for me, starting with the least most forceful use of force to the ultimate force, the steps that are currently being taught at the Academy.

CHIEF HARVEY: Yes. Beginning in an arrest situation or control situation, the beginning and most lowest level of having the arrest accomplished is just a verbal compliance,

the officer verbalizing and directing the subject as, you know, that he's in custody and to come along. And, of course, in most cases compliance is obtained.

The next level up involves what we call the pain compliance holds which are, in effect, wrist locks, twist locks — they're wrist locks. That results in response to resistance that may occur from an arrestee.

The next level or order of violence is the control holds themselves, the actual control holds involving the modified carotid, the carotid, the bar arm, and these holds when they are in a locked position.

The next order of violence, or escalation of force, is the self-defense techniques — the self-defense control holds, involving kicks or involving the use of a baton, body throws. And that, of course, is in response to some very strong and aggressive attack, usually with a weapon. And, finally, of course, the last response is in the use of the firearm, that is, when a life is in danger or attacked with a dangerous weapon.

COMMISSIONER WILLIAMS: Thank you, Chief.

COMMISSIONER MONTENEGRO: Chief, there were several deaths — one or two, I think — at — how did they occur? Was it the bar arm or carotid, and in what sector of the City did they occur in?

CHIEF HARVEY: Commissioner, I can't comment, mostly because I'm not fully aware of those instances. There was, as reported, some use of control holds in those incidents. I'm not familiar with the cases. They are in civil litigation. They are in lawsuit. Claims have been filed. But I'm not that conversant with exactly how they did occur.

CHIEF GATES: To answer your question, in two recent histories, I think, brought most of this upon us. One is the

Whitehead case, 77th. And the other is the Anthony case; that's Newton.

COMMISSIONER MONTENEGRO: Are they the bar arm or carotid?

CHIEF GATES: Well, the bar arm, I think, was applied in both cases.

COMMISSIONER MONTENEGRO: Chief, during the recent demonstration, the Iranian students, there was a great deal of injury and violence occurred. According to the reports, most of the injuries occurred from the result of the use of the baton. Do you recall was the carotid or the bar arm used on that particular date?

CHIEF HARVEY: No, sir. I do not know. I just do not know the facts surrounding that situation.

COMMISSIONER MONTENEGRO: Do you recall, Chief?

CHIEF GATES: We have no evidence of the bar arm being used; although, we may have. Most of the action came about by utilizing batons, reacting to the sticks that were being used by the demonstrators.

COMMISSIONER REINHARDT: Commissioner Fisk.

COMMISSIONER FISK: I am very much impressed with that report from the Hollywood sergeant. I don't recall his name. I was impressed with the fact that he would take it upon himself, apparently, to engage in this rather extensive research project and report. It's been two or three months, I believe, at least, since he prepared that. I've seen it referred to a couple of times, and the Department is going to evaluate that. It seems to me that we shouldn't have to wait very long before we begin to share that kind of information with other men in the Department.

Do you have any notion as to how long it will be before we will start to disseminate that information?

CHIEF HARVEY: We are hopeful to have a training bulletin developed within three weeks. I'm not, you know, hopeful —

COMMISSIONER FISK: Based upon that general approach.

CHIEF HARVEY: Based upon that general approach, it does involve more than — it does involve some additional research. I think that it's — in talking to a great many people who have been involved in similar circumstances, I think, to see what techniques the Hollywood sergeant's reported on, and it can be verified, or what other ideas other people might have, it does involve some research. We'd like to do a good job of coming in with some modified training in that regard.

COMMISSIONER FISK: I think it's particularly important, because it involves prevention. It reduces the possibility of conflict. That, of course, is what we prefer. All of us.

COMMISSIONER REINHARDT: I think it would certainly be helpful if it were possible to have that work completed by the time the new training program starts, because that would be an opportunity to utilize that information.

CHIEF GATES: I'm not sure we could do that. We will try, but that's a very, very difficult bit of research. It's not as easy as it appears. I am as impatient as you commissioners, but it is a very difficult research to conduct. Whether we have it completed or not, I think it's information we can share with officers who come there as a technique that may be utilized. It may not be totally applicable. It may not be totally acceptable. At least, it's a technique we can try, whether we have completed the research or not, so we can comply with the training.

COMMISSIONER FISK: At least, you have one sergeant who believes it is useful.

CHIEF GATES: It has proved successful on a limited variety of situations.

COMMISSIONER FISK: Well, that's worth disseminating.

CHIEF GATES: That's right. That's my feeling. It's worth trying. I just don't want to lead anyone astray in believing that we have all that research completed. I don't know. I'm not sure we have the resources to —

COMMISSIONER REINHARDT: Seems there is not much to lose by attempting some of those techniques. If they don't work, we're really not any worse off than if we hadn't made the effort.

CHIEF GATES: That's right.

COMMISSIONER REINHARDT: All right. Are there any other questions of Chief Harvey or the sergeant before we hear from some of these people who have come here to speak today?

COMMISSIONER WILLIAMS: I wish they would both remain available, because we might have questions after.

COMMISSIONER REINHARDT: Thank you.

Councilman Farrell is here. Councilman.

COUNCILMAN FARRELL: Good afternoon, gentlemen.

First, I want to just address a concept. I'm aware today that the Chief's report on the Council file is before you. And, as chairman of the Public Health Human Resources, Senior Citizens Committee, I would like to reserve comment on the report until it comes before committee.

I had asked for the opportunity to come before the Commission about a month and a half ago to address you as the

governing body of the Department to consider something that Council colleagues felt disposed to strike from the Council action. And that was to address the concept of moratorium on the use of control holds.

The only reason I wanted to pose that is that I feel that, given the explanation of the theory which underlies the use of force, i.e., bringing people under the command of the law enforcement officer as it was just described by the chief — the contact, the conversation, and then going to the wrist lock, and then going to the choke hold, and then considering self-defense techniques, including possible use of weapons — I'd just like to reflect an attitude that I feel exists in my constituency. Quite often, there is no progression of steps. There is the contact, and there is the conversation, and then there is a movement directly into the choke hold. These are the kinds of complaints that I have been aware of, that have come to my attention. They seldom come because a police officer breaks somebody's wrist in the process of applying a wrist lock. But when you come to the area of the control hold itself, I would like to still make the request of you all as the governing body of the Police Department, since it was not conveyed in the report coming from the City Council — I would like you to consider a moratorium on the choke hold.

Or if you would have it, look at putting the whole control device area — you use the arm up around the neck. Consider putting that in abeyance and then charge the Department with coming up with something that's more in the philosophy of "walk and talk," an innovation apparently this officer has discovered in the Hollywood Area where the people apparently can use common sense and talk to folk who may be under the influence of something like a PCP and don't necessarily cause there to be physical closure and

contact between the law enforcement officer and the civilian, the person being talked to in the first place.

I'd like to argue there can be reasonable grounds for people to consider that. Let's take, for example, the existence in people's minds about the law enforcement officer and the potentialities of their having that choke hold put around their neck. I'd like to suggest if you really tested that out, if there was a way that you could sample public opinion around the City, you would find that there are people who have a greater propensity to believe that it's going to be applied against them in some parts of the City, I've been told.

I think if we use shorthand, "hook and book" is more prevalent, as opposed to "walk and talk" in certain areas of the City. And by asking you to put a moratorium on the choke hold, I think, what I would be asking you to do is to give instructions that there be a mandate given to the Police Department that in 1978, as we get towards the end of this century, that there is more room for experimentation into human motivation. And as a member of the City Council, I want to just remind you that we spend a lot of time and energy and invest a lot of money into the psychological testing, the training, understanding the well-being and motivations of people who are law enforcement officers.

I think we have the capacity in this Department, perhaps uniquely in the United States, to address the kinds of ways — that we look at restraint the same way. What do we lose by saying that we're not going to use control devices? And we're going to put an emphasis on "walk and talk."

Perhaps, like the gentleman in the Hollywood Area found out, there are conditions under which it may call upon you to use a heck of a lot more skill to bring someone to compliance by body style and by showing your intellectual ca-

pacity to take charge of a situation by your presence and use some of these techniques in talking to people, as opposed to quickly going through the routine and moving to closure. I think that you all would understand that.

As a member of the City's Board of Directors, I feel that those of us who are supportive of the Police Department, as indicated by our votes, most certainly expect you to apply that same kind of scrutiny of motivtion, and behavioral techniques among law enforcement officers, as they get into situations where they prepare to take people into custody, where they have contact with citizens on the street — the same extent that we concern ourselves with some of the problems that police officers have, just given the stress and strain of their jobs.

I feel that some of those techniques can be isolated and just focus right in on that area on the use of some of the holds. And then I'm sure you just can't get away from the perception that exists in South Los Angeles in people's minds and now as it has been quantified by the Carnegie Commission. If it needed being put in a report to legitimize what people feel, that in predominantly black areas of the United States people feel that things have not improved well over the past decade. And we've gone through a period where people have addressed their sense of frustration, benign neglect to chilling uncertainties about what the future means to us. One area in which that has to be evaluated is the attitudes of people as they relate to the presence of law enforcement in their communities. And I'm sure that you've sensed in some way the indignation that people have expressed as they are concerned that now there is a new technique that says "down on the ground." That perhaps being put down on the ground instead of just a person walking up for interrogation might be practiced to a greater extent,

given the discretion of the officers of South Los Angeles where they have this contact, than in other parts of the City.

And I'd like to suggest there may be a high correlation of places where people move quickly from the use of — situation of conversation to bar arm chokes and the situations where people will move from the conversation that comes from initial contact to an instance putting people down on the ground.

I'd like to suggest that if you — if you meet the characteristics, if you are in South L.A. and the car is a certain model, make, certain age, and you may be dressed in a certain way, there is a greater probability with the police contact, that you will go down on the ground, than in some other parts of the City.

And I'd like also to suggest that there may be that kind of correlation as to parts of the City where people are more likely to be moved from the situation of conversation into any of the several control holds that are utilized by the police being applied in context. And I feel that we're big enough as a city to say that under certain circumstances we really don't even want our law enforcement officers to close the civilians. I've said this before, especially in the context with a discussion about PCP when officers would know or could reasonably assume that a person seeming to be under the influence is just immune to pain, has extraordinary courage, as it were, because they're out of their minds. And there is an assumption made, I would hope, that when you as a police officer ask a person to comply to the law that that person is in control of their faculties. So they have a capacity to respond when the police officer says, "Stop. I'm about to take you into custody. Move over here." Or whatever.

That's another one that hasn't even been raised, really, as to when people are under the influence. Should we make

the usual assumptions that our law enforcement people should assume that there is noncompliance to a verbal request when there is every indication that they are under the influence of some substance that may render them not in control of their normal faculties?

So mine was not to come to speak so much to the report — although I'm glad the report is here — but just to pose that to you. Would you consider as a commission putting a moratorium on the use of the carotid or on that whole cluster of techniques known as control holds until there is some serious attention given to other more humane means of addressing control? I mean, a significant commitment to look to that area where skills are developed among law enforcement officers — the skills in conversation, the skills in presence, the skills in just making the most of all the apparatus, paraphernalia, uniform, badge, weapons strapped on the side, the height and weight and physical condition of people who are law enforcement officers — to seek compliance from the people of the City of L.A. I feel that might yield a good return for the time and energy that was invested.

And then there was one other thing I wanted to do too. One of the leaders of one of the civil rights groups in our community, Mrs. Inez Tackett, hadn't had an opportunity to come before you. I found out later that she had had a conversation with the Chief. But at the time I made the request to come myself, I also wanted to see if she could have the opportunity to talk to you. Her views — S.C.L.C.'s views on the use of the choke hold.

So since the report is here, I would hope that you could keep my comments somewhat apart from that, because the issue of whether or not the Commission should consider the choice of moratorium was never really put before you in a way that the Chief would respond to it in a technical way

or, as I understand it, put before you in such a way that you could discuss it and respond to the questions from either the Council or any of the members of the Council.

COMMISSIONER REINHARDT: Thank you.

Were there any questions from the Commission?

COMMISSIONER FISK: One. In a sense, I followed, because there is much substance of what you have said, it's hard to know where to begin. And I find myself thinking I doubt very much if there is any disagreement to be had with what we're all trying to accomplish.

I really don't see how we dare tell our officers, how we dare deprive them of the weapons, the instrumentality, in dealing with some of the situations confronting them. But it seems to me we should seek to minimize the use of force. We should seek to minimize the escalation and use of force so that police officers don't go from the first step in the process to the last step without exhausting each individual step. It seems to me that what we have to do is realize the Department has put together a very thoughtful, comprehensive package at that point. And the success of that is going to depend upon how well we indoctrinate our personnel, how well we train them, how well we supervise them, and the atmosphere that we create internally in terms of relationships with members of the community in general, and, specifically, to the persons that you're concerned with and all of us are concerned with — the persons that most frequently seem to confront the police situation.

So my reaction is that we need to hasten the things we have talked about here today. We need to hasten our pace so that, as quickly as possible, we need to indoctrinate our personnel, persuade them to minimize our use of force.

I can't find myself agreeing, though, at this juncture — talking in terms of depriving them of something which I think we need to have.

COUNCILMAN FARRELL: Mr. Fisk, I'd just like you to consider this one: In the span of your career on the police force, the police force came from the time when they had no theory that was spelled out — conversation, wrist lock, control hold, firearm — to the place that there is a theory and something put in there.

There is a concern about the value of life today. And I think that the reason that the whole issue came up to be what it is is because people died — in some ways, some people believe as a result of those holds being utilized by law enforcement.

When the fellow got punched in the mouth by a policeman, or sapped, he didn't die. He felt bad. He may have had a split lip, but he didn't die. And in a situation just a few weeks ago, there was internal discipline meted out to a police officer who perhaps in one situation, given the police officer's judgment, a fist in the face was a better way to deal with someone who was drunk than using a control device, a control hold. And the officer wound up being disciplined.

And at this point I don't feel that it's a situation of depriving city employees of anything. Suppose it was a decision made by you all to use mace, suppose it was a decision made by you all to throw nets on people who were under the influence of drugs that rendered them incapable of making sound decisions or the assumption of a person in control of their faculties. The law enforcement officers would carry out the policy. And the Department's training section would put those things into some kind of a format so it could be taught.

As you structure things already, you put martial arts at the point beyond which you use control devices. Some of the techniques of karate, kempo, jujitsu, and all the rest, are more in line with control than with deadly force. And we do have law enforcement people who are, as best we can get them, the highest classification of people who are available on the job market, to pass examinations, to go through a physical and intellectual process to become law enforcement officers. And I would just like to suggest that the development of these kinds of skills of persuasion, of presence, to take control of a person are just as valid to investigate as the "walk and talk" which seems to be the innovation of the officer in Hollywood.

And I just have to say this based on oral presentation, "walk and talk" for Hollywood, leg brace for South L.A. — even in the application of the adjustments — it still seems to be unfair, if you could see how — if you would be cognizant of how I look at the world. And I feel the Commission has got to take those things into consideration. Otherwise, it's not going to be fair.

COMMISSIONER REINHARDT: Commissioner Williams.

COMMISSIONER WILLIAMS: I don't have any questions to ask you, Councilman Farrell, but some of the things that you have said raised some questions in my mind that I'd like to — possibly, the Department to comment on. First of all, I agree with the majority of your comments. There is no doubt in my mind that the philosophy of law enforcement espoused by this Department or any law enforcement agency ought to be the use of the minimum amount of force necessary to bring a person into custody.

Chief Harvey outlined five steps. I view the use of the weapon as the ultimate force. And several months ago, in

reviewing the Departmental policy with respect to using firearms — even drawing direarms [*sic*] from their holsters — the Commission emphasized at great length the need to use alternatives to that ultimate use of force, drawing the firearms. So I thoroughly agree with you that there should be developed as many steps as are possible between the first encounter of the person who needs to be brought into custody and the use of the firearm, even withdrawing the firearm from the holster. But you talked about two things that I'd like to have the Department comment on.

The first — and I will raise them both, Chief, before I ask for a comment. The first is a difference in approach in terms of the utilization of the steps of escalating the amount of force to be used, the difference in approach in essentially the minority neighborhoods — 77th, Newton, Hollenbeck, and other minority neighborhoods — and in the nonminority neighborhoods. I'd like to know whether there is in fact a difference in approach that the Department recognizes.

And, secondly, Councilman Farrell, you raised the question of the possibility of being hit over the head with the baton or the use of some of the other self-defensive techniques being less dangerous to human life than the use of control holds. And that raises in my mind, not necessarily the elimination of the use of a control hold, because I see the use of the control hold as less dangerous than the use of a weapon. I'd rather have someone try to use control holds than withdraw a weapon and fire it at me. And that concerns me. So maybe what we're talking about is getting some information from the Department that would help us determine whether the use of self-defensive holds, the use of the baton, is in fact less dangerous to human life than the use of the control holds. So, Chief, could you address both of those.

CHIEF GATES: Well, first of all, to answer your initial question, do we have a different kind of policy in the use of force in certain areas of the City — that was alluded to — I must say I'm disappointed I heard that come from you, Councilman. This is not true. We do not have.

We have, as long as I can remember, indicated in terms of statistics and indicated in terms of every way that you can conceive of that that does not occur. It has not occurred.

Quite frankly, our officers are confronted with more violence in certain parts of the city. That's true. That's clear. And that has resulted in a response of violence by the officers which was appropriate to the situation. That has occurred. Those are facts. And try as hard as we have — and you know how hard we've tried to assure you and assure all the members of the various communities, particularly the minority communities, that is not true. And we don't apply a different set of standards in the black community or the Hispanic community than we do in the total Caucasian community. We don't do it.

If we are met by some kind of violence in a pure white Valley district, we'll meet that with the appropriate degree of response, as well as in your community, or any other community of the city. Those are our standards. And when those standards are not met, we will deal with those situations and have dealt with those situations.

To answer your other question, Commissioner, we've examined this on a number of occasions — the use of the sap, the use of the club. Those can be extremely dangerous. We have had a great many traumas in the use of those weapons. I think, as one doctor reports, the use of a baton, if it does hit in the head area, does cause concussion. And that can be extremely serious. The control holds that we have and the way that they're supposed to be applied and

the way they have been applied in any number of situations have been successful.

People are not going to stop flying PSA because they had a mishap. People are not going to stop learning how to fly under a hood for instrumentation landings because they had an accident. And with all of the success that we have had in the use of those holds time and time and time again where we've taken people into custody successfully without any injuries to anyone, the police officer or the individual — hundreds, literally thousands of documented cases — it doesn't seem to me in the two situations that he has referred to — one, a completely out-of-control individual — that we — that you would ask that we stop all of that success and go to some other system that is not defined by you or by anyone else.

If there was an alternative system, if I could come up with a system that would protect the officers, to protect the citizens, I'd be the first to suggest it. If any of my people could do it, I'd be the first to suggest it. But I certainly don't want to go to the point where we punch them in the mouth or get them down on the ground and punch them in the mouth. I don't want to go to that kind of a system. You may want to, but I don't want to. I think the way we apply the holds is the most humane, the most successful way that anyone knows. And we have consulted all of the experts.

COUNCILMAN FARRELL: If I could make a comment on that, Chief, I understand what you say about policy. And I believe that you feel that that is the policy and that the overwhelming majority of the people who are in the field abide by that. But what I'm speaking to is something I hope you never have to rule. And that was in the past people before 1965 could care less what citizens of the city felt about law enforcement. Now we are a bit more enlightened. That came at a great price. And I'm just saying there is a

mood that can be quantified and the writings of sensitive people who happen to be just sensitive people who express themselves in a creative way.

There is documentation that comes from governmental sources and nongovernmental. To wit, the Carnegie Commission Report on the situation, the monumental address — the commission to address the situation of the racial status in the United States. They have updated the two significant works that have been done in the past, and the trend is obvious. It may be that in the City of L.A. it may be disappointed in Bob Farrell bringing it up. But better Bob Farrell, responsible elected official, bring it up than have the point made in other ways that many people feel we are not doing the best we can as a municipal government in dealing with some of the problems that get acted out and wind up with people having conflict with law enforcement officers. And that's not a criticism of the Police Department.

As I have attempted to raise my issues, I have not taken them to the Police Chief deliberately; I have taken them to the governing body of the City and to the Commission which has responsibility to being broader in their perspective than the man who is of the organization and who currently heads it. I think that's the only fair way to raise these, because these are, basically, questions of perspective. This way we don't get into name-calling and mass information — saying this is what your information says, and here is what my information says. I'm just raising it as a consideration for people in civilian leadership to say look at it from the perspective that you come to spend this time in giving it to the City and giving it to the Department. And if some of those points of view are valid, we'll discuss them. And if you feel that there is some merit in it, go out and do some research and development in unexplored areas. Sometimes you just

have to get out there and do something because you feel it's right and try it.

COMMISSIONER REINHARDT: Councilman Farrell, maybe I can comment here that I think you are raising legitimate, responsible questions, and like Commissioner Williams and Commissioner Fisk — and I'm sure Commissioner Montenegro — I agree with a great deal of what you said. I do disagree with the conclusion you reach as to the specific action you would like us to take. I think that's less important, however, than the discussion and, I hope, a continuing discussion that you are promoting over a subject that is far better handled through discussion, education, and mutual exchanges, in a learning process, than it is if those problems are ignored. And whether the facts as they are perceived in various places are true or false isn't really as important as the fact that that is a perception. And that perception, if it doesn't lead to discussion, leads to actions and conduct that everyone in the City regrets. And I think it is a healthy occurrence that you have come to the Council and to the Commission and asked for a frank and honest discussion of these problems.

Certainly, nobody can question the fact that you have been a friend of the Department. I have read that in literature that has been distributed by police organizations and others, and I don't think anyone would question your sincerity in raising these issues. I think you are certainly an elected official. You are a representative of the community and a responsible representative of your community. And I think you have reported to us a feeling and a view that does exist in that community. And we would be foolish if we were to ignore what you say to us. That doesn't mean that what you say is correct.

COUNCILMAN FARRELL: I understand.

COMMISSIONER REINHARDT: But it means that you are reporting a feeling that exists that does seem to require us to explore these issues, to look into them, to discuss them with leaders of the community, and attempt to bring about an understanding of what we are trying to do. And I hope that today we can each have somewhat of a better understanding of what is going on and what we can do in the future. The Commission has been concerned about some of these issues for sometime [*sic*].

As you know, we did attempt to deal with them and with a great deal of cooperation from Chief Gates in an area of shooting policy. The question of what you call the "walk and talk" and what the sergeant is doing in Hollywood, we raised here at the Commission many months ago when we talked about the PCP report and whether there wasn't a better way of dealing with people who were not really rational, whether there were methods of persuasion, methods of discussion, that would avoid even the first step in the use of force. And the Department is considering that type of approach and that type of program. And it has been tried, as we have heard, with some success in Hollywood. But it is essential to really examine the extent to which that can be utilized and that type of approach can be made.

On the martial arts question, that is also an issue which the Commission has raised in the past and discussed with the Chief. And my impression from our prior discussions — but I think we should discuss it further. My impression is that although those techniques may be safer if utilized by real experts that they are techniques which are in fact more dangerous if used on a mass basis. And if used Department wide, those very specialized techniques are more likely to result in the occasional accident and occasional injury and the occasional death than the bar arm control and the carotid. I think if the Department felt — the Commission felt that

we would have fewer injuries by going to a martial arts program, everyone would do it enthusiastically. The only reason we don't is that it is our understanding that the odds are there would be more serious injuries and more deaths. And that therefore it is a more dangerous technique, not if applied by an instructor or by an expert, but if we attempted to use that as a basic technique throughout the Department.

If I'm wrong about that, I'm sure the Chief or someone will let us know. But we have been operating after some discussion on that premise. And if we are ever persuaded that any of those procedures or processses are less likely to cause injury, we would be delighted to move them down on the list of — in the installation process and use those first. But as of now the best judgment the Department can make and that we can make is that they are more dangerous.

As far as moratorium, my own feeling is that the answer is really the same. Imposing a moratorium would be more dangerous to the people who we are all concerned about — both officers and persons who come into contact with officers. That if we took away what is basically a method of control that has worked safely in 99.9 percent of the cases — that's a very low percentage. That if we took away that procedure, the result would be that there would be more episodes of serious injury and death — if we eliminated that step of escalation as we go up the ladder.

Now it would be better if we never had to reach it. But I think to just bypass it and go to the next step would be jeopardizing the physical safety of a great many more people. And I think it is a caution and concern for not injuring or causing death to people that we are reluctant to abandon what is basically a less dangerous step in the procedure than the next one would be.

I hope that there will be other procedures that can be discovered and can be tested and that will be even safer than the ones we are using. And I think the Department will continue to work on that area on a continuing basis. And I think the Commission certainly wants that and that the Chief wants to attempt to discover any better and safer way to deal with these problems than we now have.

I also hope that a result of the discussions we are having here today will be that we will all learn from what you tell us of the feelings that exist. And I agree with you. The policy, I think, is basically correct. It is fine. The Department believes in the policy. But we are dealing with human beings, human emotions; and particularly in law enforcement work, you deal with confrontations that occur, flareups in a moment when people make immediate judgments. And no matter what formal policy you have, there are human beings and human concerns, human fears, the safety and justifiable human fears on the part of the police officers. And it's a difficult and a sensitive human area to deal with. And it requires the most understanding and tolerance that we can bring about on all sides of this problem.

One of the best ways to do that is to have real communication and real understanding and to have respect for the views on both sides. And I would hope that everyone recognizes the sincerity and conviction which you bring as your feelings about what the attitudes are. And I hope we understand that we have a job to do in making clear to the entire community and to everyone interested in this problem what our policies are; that we are willing to discuss them and try to bring about better understanding to try to reduce tensions. And I hope to have continuing communication with the leadership of your community on this subject.

I think the more we discuss it, the more we talk about it, the more we deal with problems, the more we will un-

derstand each other's problems. And I don't want to put us on one side and you on the other. I mean we as a community together.

I think we need more discussions. We need more respect for each other's views. And basically even though I disagree with your suggestion that we have a moratorium, I want you to know that, personally, I appreciated your coming and speaking to us the way you have today.

COUNCILMAN FARRELL: Thank you.

COMMISSIONER FISK: I have something I feel that I have to say. I would feel uncomfortable if I didn't say it. You raised the issue about differing in treatment in one community as compared to another. And the Chief responded that the policy is the same city wide. And that's quite true. But I think if we are to pretend there are — there are differences, I'm sure. Without trying to assess responsibility at this moment, I think we have to recognize that there's a lack of trust on both sides — if you want to call it that. You talk about sides. There is suspicion, hostility, lots of tensions. I'd be surprised if there weren't some difference in treatment and some differences that shouldn't occur. But I think it's important to say — and I think I can speak for all of us in this matter — we don't want those differences to exist. And it's our resolution we narrow the gap between what is and what ought to be. I don't suppose we'll ever come to the point where they'll coincide. But if we're idealistic enough to share it with you, that expectation that we will indeed have uniform treatment of persons over the entire city. I would have been uncomfortable if I hadn't said that to you.

COUNCILMAN FARRELL: Thank you.

COMMISSIONER MONTENEGRO: Certainly appreciate your visit here. I have to comment also on what the

Chief had to say regarding policy. I agree that our policy directs the officers in a certain direction, but it doesn't allegedly mean that sometimes the policy is not always adhered to. And I know there are differences within our city. Differences in the treatment of John Doe citizen. In fact, I was forced to bring this to your attention. In one of the divisions, an officer didn't recognize me as a commissioner, and I was worked over verbally until he found out who I was. But this brought the attention of attitude to the Chief, the former Chief. As to attitude.

We finally were able to have a special session. Talked in terms of attitude towards the citizen. I think that was very, very important. This Commission got a real input as to what you're saying. I would agree on a moratorium at this time if we had a substitute. The mere fact that we don't, I cannot agree at this particular time. I'm happy that we're working on modifications. I'm glad that we are working on carotid modification. I'm looking forward to what this sergeant has come up with in Hollywood. I know that some of these holds can be appropriately utilized by experienced officers. I was very disappointed to see — the reason I brought up this Iranian demonstration to see the injuries meted out to those people. But, of course, I don't know of any other way of avoiding them. There was no carotid hold nor bar arm tactic at the time. So taking all these factors into consideration, I think we have to really hold off and to await new methods before we can apprehend citizens. Sometimes citizens are not criminals. So I have to compliment you and commend you for your experience and your attitude.

COUNCILMAN FARRELL: Thank you all very much.

COMMISSIONER FISK: Thank you.

SPECIAL TRANSCRIPT REQUEST
CONTINUATION OF ITEM 51
POLICE COMMISSION MEETING
September 26, 1978
by
EVE VARIE GARDNER

MRS. TACKETT: And getting around to the choke hold — and I don't want to take too much of your time, but I want to say to you that these deaths have been caused on persons who apparently were not in possession of their full faculties, under the influence of drugs. And yet, in the cases that we have cited, there was not sufficient evidence to show that those persons really were persons that could not have been subdued other than by that carotid or what we call choke hold, the bar arm hold.

Another thing, the neck is a very sensitive part of the body, easily broken. And when you use a hold that could crush, it's a very dangerous thing. And we feel that it should not be used.

When you administer either a drug or the type of method of subduing a person, that will render that person unconscious, you take into your hands the position that is not taken by doctors or nurses unless they are trained to make people unconscious and to watch what is happening all during the process. And here you have a person who is acting irrationally, you have a policeman who is naturally emotionally upset because of what he is engaged in, and he is not in a position to make the kind of judgment that is necessary if he is going to put somebody to sleep and expect them to wake up again. So that it is very, very dangerous.

And I'm wondering, as you say that you don't know of anything else, I wonder if you're really, earnestly looking

for another way, for a better way. I say that because a few years ago, when people talked about going to the moon, there were those who said it couldn't be done. But because there were a few people who set their minds to a safe way of getting there, it was accomplished in the short space of 10 years.

And so, I would attempt to prevail upon you, if you are not willing, and you seem not to be willing, to cause a moratorium, which I think would speed up your processes in trying to find better ways to subdue people when it is necessary. That you really, with full speed, attempt to explore better ways of subduing people.

There are better ways. And I think that you can find them. I think you have the expertise within the Department to find them if you really try.

Thank you.

COMMISSIONER REINHARDT: Commissioner Williams?

COMMISSIONER WILLIAMS: Thank you very much for expressing your views today, Mrs. Tackett. What you had to say was very moderate, indeed, very reasonable; and I could not think of a more reasonable request than the last request that you made.

And if we cannot now in your presence extract the commitment that you seek from the Chief — he's given it before but I think now is again the time to restate it. If we cannot extract that, we would not be in a position to communicate with the community represented by you everyday in a very moderate and reasonable way.

CHIEF GATES: Mrs. Tackett and I have met before. And she's so eloquent and reasonable, she's extracted that from me and much more.

I expressed it to you the other day and I express it to you again. We are looking. And I don't want to say that it's as easy or not as easy as going to the moon. I'm just saying that we have not found a solution.

Not only have we not found a solution, no one else in this business that we are in has found a solution. Whether they are dealing with people in institutions, as we discussed, in hospitals, as we discussed, other law enforcement agencies, no one has come up with another system. Those on the — who are professionally involved in the martial arts, professionally involved in this kind of thing, have not been able to come up with anything.

But I assure you we continue looking. And if we can find something that is — controls situations and not cause either danger to the individual or danger to the officers, I'd be just delighted to be able to employ them.

But again, let me say again — I want to stress this — that our success rate, our success rate is very great. We do apply this hold. And if it's applied properly, these holds, there's no reason for coming up with a situation as we have had, no reason at all. They are safe holds.

I do think, though, that we have to place some responsibility on those who would inject themselves or take drugs that will cause them to do these kinds of things. They must bear some of the responsibility. We can't just allow the officers who apply these holds to be the only ones responsibile, the only ones who are the target of our concern.

MRS. TACKETT: I agree with you that — and I might say — I didn't say it at first — that certainly we know that we need the police. We — the first thing I would do if I went home and found somebody had broken into my house would be to call you. So that —

COMMISSIONER REINHARDT: He'd be there in five minutes.

COMMISSIONER WILLIAMS: From what I've heard recently, it would be five hours.

MRS. TACKETT: So that we recognize the need of our law enforcement officers.

I grew up to be taught that they were our friends, somebody that we can depend on. And this is what we really want.

But I'm wondering whether the kind of regulations — I don't know what they are — but the regulations for the use of the choke hold — for example, if there are two officers present or three officers present, is it necessary to use it? There were two officers present in the case of the last time it was used. And to me, it seems that that should not have been. It should not have been necessary to go that far in subduing a person.

I have known of situations, not necessarily where the choke hold was used, but where many cars were in — police cars were involved in one minor incident where a black man was involved. And so, I, you know, I just wonder whether — what the regulations are and restraints in the use of this method of subduing persons.

CHIEF GATES: Hopefully, we can through display of numbers dissuade anyone from wanting to engage in any kind of physical combat. But if a hold is applied, it's only applied by one individual; and it's applied very quickly, and the individual is subdued, and handcuffed, and taken away.

The one situation you are leading to, no one really knows why that occurred at all. One officer was knocked down by the individual. The other officer applied the hold. And it's a mystery to some degree, to the coroner and to the rest of

us, why that occurred. We do not know. There's no sign of trauma. There's — we just don't know. We really don't know. The officer believes he applied it absolutely the correct way. But we have a death. And only thing we can do again is point to our successes and use these individual tragic situations to improve and define ways that they will never happen again.

MRS. TACKETT: You brought up another thing and that is the condition of the individual on whom that hold is used. There have been no tests as to blood presure [*sic*]. There have been no pretests as to health condition. And to, you know, apply a hold like that to make a person unconscious. That, so, the condition, the physical condition of the individual up on [*sic*] whom it is applied could have a great deal of effect on what is going to happen as a result of it.

CHIEF GATES: After Proposition 13, we don't know the physical condition of our officers, either. We don't have them tested. And I don't know how that can be done. I really don't.

But you raise some very sound — as you did the other day — some sound suggestions and some good reasons why we all ought to be paying a great deal of attention to all of this.

And let me assure you — and also let me invite you to our Academy and our training staff where they would be very happy to demonstrate —

MRS. TACKETT: On me?

CHIEF GATES: We will just teach you to — how to apply the hold so if you go home and find the burglar —

MRS. TACKETT: Except I'm not tall enough to reach anybody's neck.

CHIEF GATES: But we would invite you to our Academy to allow you to see how we instruct the officers. And I think

you get a better idea of how we are approaching this. And maybe have — not as much confidence as we'd like you to have, but more confidence than you have now. And I'd like to invite you at any time to do that.

MRS. TACKETT: I'd be glad to come, but I would think somebody with more experience than I —

COMMISSIONER MONTENEGRO: You raised a good point as far as the condition. According to the study here, it's indicative that people over 40 years of age have a greater problem of injury with these type of choke holds. So, that's the point to consider.

I have attended the Academy's training. And I have been really impressed of the utilization of the modified control hold.

And I can dare say, Chief, that if the officers — the recruits would utilize these holds on any suspect, no death would occur. They're really trained well.

But I just wonder, and I think, is this the new approach now that we are reviewing, the basis, the officers in the field on these types of holds?

CHIEF GATES: They're going back for retraining on their ability to apply these holds and apply them correctly.

COMMISSIONER MONTENEGRO: So, we can see that the Academy is modifying these holds. The Department is making certain that the officers who have been out in the field two, three, five years appears — the lapse of time that they may become rusty in their training. And I'm glad the Department has them.

Now, regarding Proposition 13, Chief, I did talk to a captain and the fact that we lost over 400 men. And he told me that the fact that he has less personnel in that division he wasn't going to be so much concerned about the complaints coming in. And frankly, that disappointed me. I

know that the officers are going to be under more stress, have more problems because of the Department's — City getting bigger, the Department's getting smaller. But this type of comment, Chief, is really rubbing me wrong.

And I think we have to remind various divisions that they just have to do the best that they can. And make certain that these complaints do come in. I look upon a legitimate complaint. Of course, again, this reflects the thinking of one particular person. But I hope this type of thing doesn't permeate the division and it's not the Department's policy.

COMMISSIONER REINHARDT: Thank you very much, Mrs. Tackett. It's nice to see you.

MRS. TACKETT: Thank you.

COMMISSIONER REINHARDT: Reverend Merriwether, you wish to speak on this?

REV. MERRIWETHER: Commissioner, I'm hoping that I can talk as quiet and as long as Mrs. Tackett. But I'm a preacher. And I talk like the police talk in my community, loud and rough.

I listened to all the accusations. All of them. And I don't think there's a person in this room, including Chief Gates, that ever had as much experience with men under drugs as I have.

I've been passing 26 years. And before the word P.C.P. ever came up, men were being choked out. I've been called many times at night, mothers, fathers have called me. Their daughters, their sons was on drugs. Nothing they could do about it. It's the poor children.

When a man's under drugs, normally, he's a happy man. That's why he gets like that. And if he's a poetry writer, he'll listen. But he's like a rattlesnake. A rattlesnake won't bite until you bother him. But when he's approached wrong,

or provoked, it aggravates the stuff in him. Then he doesn't care what happens.

All the cases I report, men under drugs, I went to them as a man. I approached them as a man. And they listened. They will sit and listen to you. But when you approach them and start calling them "you no good this and you no good that," it makes them angry and they don't care. That's one point I want to bring up.

The other point I want to bring up is that there is a difference. I travel all over this City, all times of the night. And there is a difference the way the police treat us in our community than they do in the other community, in spite of what anybody says. I've experienced it. I've watched it. I even watched it in front of my church many times. How officers stop Caucasians, walk up to them, ask them for their driver's license, write them a ticket, "good by." I've watched them with blacks. Get out, up against the wall, search the car. There is a difference.

But I must admit it's changing a little. But it is a difference. I've been all over Beverly Hills. I was a painting contractor. I've seen it all in Beverly Hills. I've watched them stop men in Beverly Hills. It's a difference in approach when they stop us in our community.

Last night, I saw 15 young men coming from the playground playing ball up side a van with their hands up — coming from a ball field, every one of them. It's a difference. And they have football uniforms on. Police got their lights, looking in their eyes. There is a difference. I pull up behind the police car and stopped, left my parking lights on. And when he looked back and saw me, it was less than five minutes those young men were gone.

We do get treated different. The approach is different. They don't approach us as men. We always have to (un-

intelligible). They call us names. And the only way you have to know it, you have to live out there or your child has to live out there.

Chief Gates, it's true, in spite of you saying it's not. You don't believe it, send your son out to stay a week or two and travel around nights. You find out.

Two, that choke hold would never have to be used with the right approach. I have a young man with me right now; and I saw it used with men who were handcuffed, not on P.C.P. I've watched it being used. This is what the issue is.

This young man right here was picked up by 77th police, he and his brother. Supposed to have snatched a purse. When the lady came in, she said, "These are not the young men." They kept them in the cell, handcuffed. And his cuffs were so tight until he started kicking, making noise, and asked the officers to loosen his handcuffs. Can I call the officer's name because I'm in court? The officer came back there, took one handcuff off, and choked him out. Was he on P.C.P.? This is what we are talking about.

We're not talking about so much a man who been choked out on P.C.P. We are talking about being used as guinea pigs for in case they do arrest somebody on P.C.P. And the reason I'm saying is because I saw it happen. Then you say, bring us some names. Bring us some names. I've brought names many times. Nothing has been done about it.

This young man was choked out in jail. And we have the name of the officer who did it. Was no sergeant, just an ordinary officer who did it. We have his name right here. This is what I'm down here for. Not so much of people on P.C.P. I'm down here for those getting choked out that's not on P.C.P. And it's happening. Everyday. It's happening

by officers in our area. And it's been reported, but nothing's done about it.

And I said to you, Chief, just the other day. I know you're not going to believe it. If I bring this on myself, I'm going to keep bringing it. I have proof on this young man. I have evidence right here.

It's been proven that they choke men out that's not on drugs. It's the approach you make. If they would approach us like men, I don't think they'd ever have to use that hold in our area.

Even on men who are on drugs, I've approached many of them, many, many a one. And they have never attacked me. Because I approach them right. But men who are on drugs or even drunk, you walk up and start calling them a black this or black that — and the minute you say you're not, you just had it. And that's exactly what happens.

COMMISSIONER REINHARDT: Commissioner Williams?

COMMISSIONER WILLIAMS: I have one question, Mr. Merriwether, but I'll leave the question for last.

I have a couple of comments. You made several points. Most of them, I think are very valid points.

The first point that you made related to dealing with people who were under the influence of narcotics. What you said in that regard seems to be concurring by at least some of the people in the Hollywood Division who feel very strongly that that kind of approach is the approach that can be successful in most instances with people who are under the influence of narcotics. And that is something that the Chief has indicated the Department is looking at. And hopefully will be able to validate from the departmental point of view the use of that procedure.

Is that not correct, Chief?

CHIEF GATES: Yes.

COMMISSIONER WILLIAMS: Secondly, you said — and I think very validly so — that there is a difference —

REV. MERRIWETHER: There is a difference.

COMMISSIONER WILLIAMS: — in the manner in which some officers approach individuals in minority communities and the manner in which they would approach individuals in other communities. I raise the issue initially by asking the Chief what the policy — I know what the policy is, but as Commissioner Fisk indicated, he would be uncomfortable and I would be uncomfortable, and I'm sure even Chief Gates would be uncomfortable if anyone in this room had the feeling that we felt that. Because the policy is clear that all of the officers in the Department adhere to that policy at all times. I think that the majority of the officers adhere to the policy the majority of times, but there are instances when the policy is not adhered to. So, I think you were correct in making that statement.

Finally, you talked about the young man sitting to your right. And you indicated that a bar arm control had been used on him in — while he was in custody.

REV. MERRIWETHER: Handcuffed.

COMMISSIONER WILLIAMS: And you indicated that that matter is currently being litigated in court, I presume.

REV. MERRIWETHER: It will be. It was reported. But I don't want to talk about it because the officer that was involved, he's involved in me going to jail. So, I don't want to go into it. We have his name and everything.

COMMISSIONER WILLIAMS: With respect to this case, if the facts are as you state them to me — and I have no reason to believe to the contrary because you have stated them — and you have the young man, have these facts been reported to the Department?

REV. MERRIWETHER: Yes.

COMMISSIONER WILLIAMS: Could you define more about it, where, when, and who?

REV. MERRIWETHER: Can I tell you where? I was asked — I'm trying to do what I'm supposed to do and do it right. And I was asked by the commanders — I was hoping the Commission met me there because I have an accusation against me — to go straight to the commander instead of coming to the Commissioner.

Now, everytime a person would come to me, I would come straight — I started taking it to the commander, nothing would happen. So, I bypassed the commanders and I would come to the Police Commission of Internal Affairs and report it. But, since I've met with the commanders — and I see we have some new commanders — I think it's no more than fair that when instance happen, and people come to me. The only time I come back is when people come to me. I'm not on the street looking for nobody.

I took this case straight to the commander. And I think his mother told me this week — last week that she was called. And said that the case is still being investigated. This is all we've ever got.

COMMISSIONER WILLIAMS: You say you took it to the commander —

REV. MERRIWETHER: Yes.

COMMISSIONER WILLIAMS: — at one of the divisions?

REV. MERRIWETHER: Yes.

COMMISSIONER WILLIAMS: Was that 77th?

REV. MERRIWETHER: 77th.

COMMISSIONER WILLIAMS: And when did this occur?

REV. MERRIWETHER: About — over two months ago already.

COMMISSIONER WILLIAMS: When was it reported to the commander?

REV. MERRIWETHER: When they came to me and told me about it, which was about a month ago, I think.

COMMISSIONER WILLIAMS: And did you make a formal complaint with the commander?

REV. MERRIWETHER: Yes. I took him to the station.

COMMISSIONER WILLIAMS: Chief, is there anyway we can ascertain whether this is currently being investigated?

CHIEF GATES: Right now? If we can have the young man's name, and — we can do it.

COMMISSIONER WILLIAMS: I think it would be helpful if we can ascertain before Mr. Merriwether leaves whether or not this is currently being investigated through the channels that he's been asked to use to report the kinds of things that he's talking about.

CHIEF GATES: If we can get the name, we can.

Dennis, would you get his name and check Internal Affairs?

REV. MERRIWETHER: If I do, I'm going to give some information away about my case. And my attorney asked me not to even mention it.

CHIEF GATES: All we want is the young man's name.

REV. MERRIWETHER: Give your name, son.

MR. BIDDLE: Curtis Lavel Biddle, B-i-d-d-l-e.

COMMISSIONER FISK: Middle name?

MR. BIDDLE: L-a-v-e-l.

COMMISSIONER WILLIAMS: And do you have the date? Do you recall the date that this occurred?

MR. BIDDLE: No.

CHIEF GATES: Reported in 77th?

MR. BIDDLE: Yes.

REV. MERRIWETHER: Commissioner, could I say something? There were other men I could have brought down, but I called before I came there, and I was told it wasn't necessary to bring them all. I have other men who claim — I can't swear to this because I didn't see them, but they say the same thing that I'm saying; that they were choked out after they got in jail, some of them. And some of them said — one young man I can bring in. He'd come in a minute. He was choked out, handcuffed in the back of the police car. And he wasn't on drugs. And I could have brought every one of them in here. But I can't swear it's the truth. That's what they say. That's hearsay. It's bad to go by hearsay. Dangerous.

COMMISSIONER WILLIAMS: Sometimes helpful to lead to the development.

REV. MERRIWETHER: To listen, but not to speak till you know.

COMMISSIONER WILLIAMS: It's all in the information.

REV. MERRIWETHER: Right.

COMMISSIONER WILLIAMS: We don't — that was all I had to say, unless you have something further.

REV. MERRIWETHER: No.

COMMISSIONER WILLIAMS: I wish you would not leave, however, until we ascertain this.

COMMISSIONER MONTENEGRO: Mr. Merriwether, this may interest you. But last week, I think it was Wednesday at the dedication of the new Southeast Division — I don't doubt what you're saying. I agree with many things

that you have stated. But, on the other hand, I stopped by at 77th, meeting with Captain Parks. We went together to the new division. And I walked in the front desk. And I started talking to the officer in Spanish. I told him that I didn't understand. I had a problem outside. This officer was very busy, directed two or three people, had the phone going. But he was very courteous to me. He said, "Un momento. No hablo Espanol." Very courteous to me. He got Joe Orbillo to talk to me. Then I identified myself to the officer. He was stunned. "I should have recognized you, Commissioner." I said, "Well, it makes no difference. You treated me like a person should be treated. I appreciate that." Captain Parks in there. And I told Captain Parks how pleased I was with this attitude. I told Chief Gates about it. I came back. And I asked Captain Parks, "I want to go to the roll call." About 35 or 40 officers. And I gave a little background. And I told them about that particular incident that I had, how positive it was, how refreshing, and how it was my view and the Commission's view, the Chief's view. And this type of attitude is what we are concerned with. And, of course, the Chief agreed with me a hundred percent. And I told the officer this type of attitude I want to see between the blacks and whites. Every person, regardless of his color, should be treated as a gentleman or a lady.

REV. MERRIWETHER: But there was a time when you walked in there, it was all different, altogether.

COMMISSIONER MONTENEGRO: Of course, he didn't know who I was. But we are concerned with what you have to say. I know Captain Parks is. Not to disbelieve what you're saying. But talk in terms of ball park terms. Well, this is also our concern. And trying to multiply this type of positive experience to the rest of the division.

REV. MERRIWETHER: Thank you.

COMMISSIONER REINHARDT: You will wait for awhile until we get the report. And thank you for coming, both of you.

All right —

REV. MERRIWETHER: I want to hear some comments about the differences. I'm saying there are differences and if there are differences, how can we stop them?

COMMISSIONER REINHARDT: Well, let me say I'm glad to hear you say that things are improving. That is good.

I don't think anyone here would say to you that things are perfect. We hope they continue to get better. And what we are trying to do is, by having discussions we have been having, by trying to look into complaints, by — there are a number of things that are going on that I think provide hope that things will continue to improve. There are problems in society which is what Commissioner Fisk was saying. And they're going to be — they're not going to change overnight in Los Angeles or anywhere else.

I think as long as things get better, we can be hopeful. And I am encouraged to hear you say that things are getting better.

Now, there are a number of things that are being done. I heard Chief Gates address the graduates at the Academy last week. And he told me that Chief Parker addressed the graduates, and told them the most important thing was honesty and we are going to have an honest Department. And he told them Chief Davis had a message for them. Maybe it was a psychological block. I can't remember what it was. But he did give them whatever the message was. He said to avoid political activity, I think it was. And then Chief Gates said he endorsed those messages. And he had a message to give them also. And one of the messages he gave to the recruits was that he has declared it administrative

felony to treat persons — whoever they were — with disrespect. And that's a very important message. Very important for the Chief to say that to graduates of the Academy. And I think both the Chief and the Commission are determined that that message be not only delivered, but be enforced. And let everybody know that that's not just a written policy, but it's the attitude of the leadership of this Department.

But you can't force people by laws to have respect or to treat people courteously. You can let them know that it's important and that it really is the policy of the Department. And it's important to the Chief and that he's going to see that that's carried out. That won't change basic attitudes overnight, but it is a very important act, and a very important attitude, and a very important policy.

And I don't have any doubt that the Chief means what he says. And he's determined to see that that message gets to the entire Department. And I think the Department will be responsive to that. Because it's a fair message, it's a proper message, and it's an important message. And I think that things will continue to improve if we can have the kind of constructive instructions, and learn to have more trust and confidence and respect for each other. And I think Councilman Farrell was very helpful today. I think Mrs. Tackett was very helpful. I think the reaction the Department has had to some of these criticisms has in the main been healthy and constructive.

And I think we have to take advantage of the opportunity that we have to try and continue that kind of improvement. And to recognize that, one, these situations arise under most difficult circumstances. They arise where people have fears. And police officers are human beings. And they have fears. And they have legitimate concerns. And they are human individuals. And we all have to try to develop more un-

derstanding and more tolerance on both sides. And that the more effort we devote to that, I think, the more the problem will improve.

And all I think we can hope is that we accelerate that process of gaining mutual confidence and mutual understanding and increasing the communication. And that means our recognizing that there are legitimate concerns. And that there are legitimate leaders of our community who speak legitimately for the views and concerns of the people in that community. And, on the other hand, your understanding of your accepting the fact that there are going to be individuals who are going to make mistakes. And they're not always motivated by bad feelings because they're bad people. There will be some errors in judgement. And there will be some problems. And we have to be firm in our attitudes about them. And we have to be tolerant and try to accept the fact that there will be errors on both sides.

That's my reaction.

REV. MERRIWETHER: Can I say just one thing? The only thing that disturbs me, and hurting to us in our community — and this is the truth — I read an article in the Times the other day where the motor sergeant said, "The law is the law is the law." I agree with that. Now, I got to say it. Who broke the first law on my partner? Was a big sign that says — you know — you get where I'm coming from? The reason I'm saying this is the first law was broken by the police.

COMMISSIONER REINHARDT: I read the statement, too. And I don't think it was a comprehensive statement of what a police attitude should be. It was factually correct —

REV. MERRIWETHER: I agree with that.

COMMISSIONER REINHARDT: — but there's more to it than that. And we can't just look at things in isolation. Laws are to be applied with some understanding, compassion, and reason. And it's not just enough to say that "the law is the law is the law."

Whoever broke it first, that is an important element. But in isolation, it can lead to a misapplication of justice.

REV. MERRIWETHER: I think — I think that when we violate the law — if I park in the red and I come back, I have a ticket on my car for parking in the red. The law says, "Don't park here;" right? And if I don't pay that ticket, it goes into warrant; right?

The police can do it. I can show you 40 or 50 cars right now that says, "No parking." People talk about it, but they won't come in and talk to you about it. It says, "No parking anytime." You can go right down on the other side of City Hall there, and it's a whole string of police cars there. But there's no parking, no tickets, or nothing.

And I feel if they — if the officers can violate the law, I feel if they park in the red, they should get treated just like I am if I park in the red. This is what I'm saying. They can commit certain crimes and nothing done about it. And I can commit the same crime. And I can go to jail. I don't think it's fair.

COMMISSIONER REINHARDT: We will try to keep you out of jail for awhile.

REV. MERRIWETHER: I'm not worried about the jail. Jail was made for me.

CHIEF GATES: We have no record. Lt. Lunder has checked with Internal Affairs. There's no record. He's talked to Captain Mc Vey. He's talked to Captain Parks. Parks recently talked to Rev. Merriwether. And that case

was not brought up at that time. So, no one knows anything about that.

REV. MERRIWETHER: Son, didn't Captain Parks send two officers out to your house the other day?

MR. BIDDLE: Yes.

REV. MERRIWETHER: I sent him and his mother and the boy along with him to Captain Parks and called Captain Parks.

CHIEF GATES: Was the complaint made in another name or —

COMMISSIONER REINHARDT: Why don't we take a recess and I'm sure we can somehow find out what the facts are.

REV. MERRIWETHER: I only report what they report to me.

CHIEF GATES: Lt. Lunder, could you confer with them and see what we can find out.

COMMISSIONER REINHARDT: Rev. Merriwether, you'll be around for awhile?

REV. MERRIWETHER: Call his house. His mother's there.

COMMISSIONER REINHARDT: Let's find out what we can find. We're not going to leave.

REV. MERRIWETHER: I would appreciate it.

COMMISSIONER MONTENEGRO: I want to say — I don't know whether this is going to make you feel better, but last week, I had to call the Commission of the City. "What's the policy of the City to ticketing Commissioners?" He said, "I don't know. The officer has to use discretion."

Do you know that the Chief's driver got a ticket by a member of the Valley P.D.? A policeman was —

REV. MERRIWETHER: Did he pay it?

COMMISSIONER MONTENEGRO: I've gotten tickets in the City.

REV. MERRIWETHER: Did the Chief's driver pay the ticket?

COMMISSIONER REINHARDT: We will take a recess. (Recess was taken from 4:10 to 4:22)

COMMISSIONER REINHARDT: Board of Police Commissioners is again in session.

I have a note that there's one other gentleman that wishes to speak briefly on the issue of the choke hold. I can't read the name. Is there someone here who wishes to speak on the choke hold?

MR. COWDIN: Rev. Hoden, Church of Scientology.

COMMISSIONER REINHARDT: Is there a Rev. Hoden?

MR. COWDIN: He's not in the room at the moment.

COMMISSIONER REINHARDT: Would somebody ask if there's a Rev. Hoden out in the hall.

Fine. If there's no further discussion then on the issue, we can have a motion on the report.

COMMISSIONER FISK: Take the report separately, or — I'll move the approval of 5I.

COMMISSIONER MONTENEGRO: Second.

COMMISSIONER REINHARDT: There is a motion made and seconded to approve Item 5I. All in favor of the motion, say, "Aye."

COMMISSIONER FISK: Aye.

COMMISSIONER REINHARDT: Aye.

COMMISSIONER WILLIAMS: Aye.

COMMISSIONER REINHARDT: The motion is carried.

All right. Back to the agenda. Hearing Examiners' Reports —

Here's the reverend.

We tried to find you, Reverend. We have just acted on the report. We couldn't find you. But I understand you want to make a few brief comments.

REV. HODEN: I would like to, if I can.

COMMISSIONER REINHARDT: If you could keep them reasonably brief, we would appreciate it.

REV. HODEN: My name is Rev. Ken Hoden, H-o-d-e-n. And I represent the National Commisssion on Law Enforcement and Social Justice. And my purpose basically here today is to inform you a little bit about the effects the choke hold has on a person's neck from a doctor's point of view, and a chiropractor's point of view, and various other professionals in the field.

Now, what I've done basically is collected a series of affidavits. Now, I assume that these have been given to you. I don't know if they have. In other words, have the Commissioneers seen these?

MR. COWDIN: They are available. They really triggered the initial study on the choke hold when we requested the Chief to do these three or four months ago.

COMMISSIONER MONTENEGRO: We have a batch of affidavits in our report. Pro's and con's.

MR. HODEN: All Right. What I'll do then, just in case you're not familiar with them or you haven't read them for a little while, portions I've underlined I'll go through it very quickly. I think it's important for you to make a decision on your part, the liability of the choke hold.

Just to clear a couple of words so you'll know what I'm talking about, from my understanding, there's three holds that were used: bar arm, carotid, and locked carotid. The bar arm is essentially the forearm against the throat or the trachea. We then moved over to the carotid which applies

pressure to sheaths that went up either side of your neck. And the locked, of course, with the other arm up to provide additional pressure to the back of the head.

Now, on these sheaths that run up either side of you neck, within that sheath there's a jugular vein, there is a vagus nerve, and there's a carotid artery. The jugular vein does not present much of a problem. When pressure is applied to the vagus nerve — that is a nerve that runs from the brain down to the heart — if pressure is applied to that nerve, it can cause, per doctor's statement, instantaneous heart attack. And one of these individuals who dies, I believe, from what I've read in the reports, there was trouble with the heart stopping.

The other item, which is in this sheath, is called the carotid artery. What it does is bring blood from your heart up to the artery up to the brain. When you apply the carotid hold, it pushes it against these things. It stops the flow from going up. And causes unconsciousness. If this is continued for a period of time, of course, it will result in brain damage. A person can go into a coma and eventually die.

In the last year, from my knowledge, the choke hold has caused four deaths: Bell and Whitehead have gotten a lot of publicity. One person was Mr. Peterson. He was a Boy Scout. He was choked out. He died. It was not within the jurisdiction of L.A.P.D., just a little bit further south, I believe, in the (inaudible). And then there's recently, of course, the person who died in his living room. The point being is that there are certain things concerning the neck that cannot withstand the blow of, say, somebody's face or somebody's body.

Just for the record, so we can have it, I'd just like to record these few things.

This is the statement from Victoria Samler. She's a doctor, a local doctor here. "The possible dangers resulting from" an "incorrect application of the above-named control" hold — and that would be the bar arm, the carotid, and the locked carotid — "the bar arm control can break the bones in the trachea" — that's your neck where the air moves up and down — "causing the trachea to collapse cutting off air to the lungs. This, of course," could result "in suffocation and" probable "death."

Number two, "in the locked carotid, one runs into a very serious danger of fracturing cervical vertabrae." As you recall, one of the individuals did die from a broken neck. "This could easily result in serious damage to the spinal cord with resultant paralysis, and inhibition of organ and nerve functions." I won't go through the whole thing.

I have another affidavit from David McCracken. He was an Underwater Demolition Team expert. He was also SEAL in the United States Navy. Essentially, his training involved hand-to-hand combat training. They do receive quite extensive training. His statement toward the end, which I'll make available to you all, "The purpose of the bar arm choke as practiced in my training, was described by my instructor as 'a good way to take somebody out.' " At this time, he was training to go under water, come up, and take out sentries and eventually kill them.

Another affidavit. This is by Stephen Price. He is a chiropractor.

Now, as you said, I believe Chief Gates said there have been a lot of people who have had this and didn't die. Somebody mentioned 99 percent. I'm not sure who it was. I haven't seen the statistics, but I'm assuming that you wouldn't say this if this wasn't true.

There can be serious damage to a person that will not come up until years after this hold has been conducted on a person. I just think you should hear this. "Spine pressure of that magnitude can dislocate or slightly dislocate vertabrae so that when the pressure is released the bone is still misaligned and there is still nerve pressure resulting in problems many years after the move has been done." "A ligament can be torn inside the spinal canal — area inside bones where spinal cord travels — as there are not very many sensory nerves in the canal, the pain will go away in a week or so. A disc can be damaged and due to the fact that it contains no sensory nerve endings, the individual would not even be aware of it. The immediate results of a misalignment of the atlas" — the top bone in your back bone — can result in misalignment of the atlas, "axis, cervical vertabrae 1 and 2, are headaches, nervousness, and chronic tiredness. The blood supply to the brain can be partially shut off and the individual can become dull due to lack of blood supply to the brain.'

There's "a property in bones and ligaments that they tend to degenerate after a trauma. A year after the injury there can be perceivable damage in the form of lipping or spurring." That's "bone growth or calcium deposits." "This causes a fixated joint with loss of motion resulting in disc degeneration and thus possible pressure on nerves which will stay with a person the rest of his life." "The carotid lock control hold as described in the above Los Angeles Police Department Training Bulletin resembles most closely the action which takes place in an improperly executed hanging, in that there is tearing of ligaments and muscles, and decreased blood to the brain."

This is from the viewpoint of the chiropractor who deals with the bones in the neck and in the back.

I have another statement from Dan DiVito who is a professional martial arts expert. Essentially, what he's saying is — and I won't bother to read it — is that it requires extensive training. Not only in an isolated incident where the person knows he's going to be choked out. In your Academy, you go and he chokes him out. It's all planned. He's going to stand here and we're going to stand here, and we're all going to work it out. Essentially, what he says, it will take up to, and I quote, "three days a week for six months" to prepare an officer to be able to take on any person in any situation under any forms of stress and apply this hold standardly.

I might also make mention there was an officer by the name of Papke, who — the information I got, testified, according to the article I read, in court, that he was, one, not told that the bar arm control hold could collapse the trachea; two, he was not told how long to leave this hold on; and three, he was not told when to release it.

The bulletin stated this hold can be lethal. It's getting in an area where negligence is not something that can be easily overlooked.

The next affidavit I'd like you to take a look at is a statement by Dr. John George who is of Bellflower, California. His statement is essentially this:

"In my estimation, the incorrect application of the holds could be caused by two things:

1) Somebody using these holds under stress to control.

2) Somebody improperly trained in the application and administration of these holds."

At least at one point in time, we know of one officer who was incorrectly trained in that he was not given this vital information. That is a problem which can be very easily solved. I'm sure we can get everybody trained on it.

The point is, you cannot train an officer to practice this on somebody who is fighting for his life. When the hold is placed, the entire trachea is closed. As far as that person knows, he is about to die. When he goes unconscious, he doesn't know — 'cause he hasn't read the training bulletin — that this officer is about — or the officer is about to release the hold. He doesn't know that.

In addition to that, right before a person starts to die, he can get what they call the shakes. If a person starts getting the shakes as he is dying, the officer might think that the person is still trying to get away and continue applying pressure to the person's neck.

Basically, the point I want to make is there's been a lot of tension on P.C.P. Must be a terrible problem to have somebody who is very violent, who is maybe destroying things. The officer, no doubt, is very frightened and he has to deal with this. He doesn't want to shoot the man because it will be all over the press and who knows what else. He does have a problem.

But from the information which I have looked at, it would be better to shoot that individual in the leg than apply this type of control to that person because he is numb. Therefore, although he may feel extremely strong, the bones of his neck have not gotten any stronger because of P.C.P. His brain doesn't operate any better because he now has P.C.P. He will die just as quickly as anybody else through lack of blood to his brain.

But because he has P.C.P., he cannot operate as he would normally. Therefore, what I have heard is he has P.C.P., so we need the choke hold when actually it should be the other way around. If he has P.C.P., that's one reason we shouldn't use the choke hold. Because he could not respond

as you or I would who is being choked out, who might instantly stop to save their life.

I've not come here with a solution. I do know I have some suggestions what could be done. I have to agree with Mrs. Tackett. If we could get to the moon, we could handle Johnny Jones (phonetic spelling) on the street corner who's going nuts a little bit if we put enough tension on him. I know there's courses where officers have to go back and get additional training on their guns and have to get additional training on perhaps this choke hold. But how many times do we take him off the street and bring him back to the Academy, give him additional training in speaking to people and seeing if we can talk him down from his high or talk him down from his argument with his wife or talk him down from the problem he's having with his neighbor or whatever he's doing. Perhaps if there was additional training and required training in the manners required that officers should use to approach people, that might be something which would alleviate some of the problems.

The other thing is, there doesn't seem to be a substitute. And we do have a category of stress which were nicely laid out as the steps that we have to take. In other words, communication, the choke hold, the martial arts, the baton, and the gun. All I would have to say is that if a person could get as close to somebody as to put their arm around their neck and get them down on the ground in the proper position, it would seem that there might be something else that he could have done or some sort of handcuffs being placed on the person before he got to the point of reaching his neck. In other words, if he can get that close to the person, obviously the guy is not going to kill him, I would assume. I've never had a fight with anybody. This is not the nature of what I'm doing. But if a person could get that close to a person, it would just seem that he could do

something else. I'm not advocating we should go around shooting people in the legs or breaking their legs with sticks, although I have not known of one person who has died of a broken leg.

I think that with modern technology, we can come up with a solution. I do feel that since you or I cannot look at a person and know whether or not they are under P.C.P., since we can't know and with information we have it's extremely dangerous to use it on a person under P.C.P., I feel that it would be somewhat irresponsible to use this hold until we come up with a better solution.

I do know that until you eliminate something, full attention will not be placed on replacing that. In other words, you would end up against the wall. It's not time to send it over to groups to study it, or send it to this Commission to look at it, or have that council vote on it. In other words, it's time to act. We don't want you officers hurt. You will come up with something.

I thank you for looking.

COMMISSIONER MONTENEGRO: Thank you.

You made a charge that an officer was not told of the damages that were incurred using the choke hold?

REV. HODEN: That's correct.

COMMISSIONER MONTENEGRO: Where was the officer from?

MR. COWDIN: We have his name, Commissioner.

COMMISSIONER MONTENEGRO: I don't want to know his name.

REV. HODEN: From my understanding it was from the L.A.P.D.

COMMISSIONER MONTENEGRO: When did that occur?

REV. HODEN: I don't have the exact date. I can get it for you. I did read it in an article, in a publication. It was written in a way that it was from a transcript from a trial hearing.

COMMISSIONER MONTENEGRO: I have gone to the Academy to observe the training methods on various types of holds, including choke holds. And on this particular visit to the Academy, they were very specific in talking in terms of damage. Certainly, time or tightness. So, I wanted to bring this up for the record that unless these charges can be substantiated, I think we had best not make general accusations.

REV. HODEN: I took this out of a publication that was published in the City. It was not a private one. In other words, if it is wrong, you would have grounds for filing suit against that. I have brought this up before the City Council. I have never heard anyone say that that is not true. I'm not even making a point that that is a big thing. But I don't know how many officers you have, but there's quite a few; and there's a possibility that one or two are going to sneak through. The point is, what I read in a newspaper is that it was true. Now, whether or not it's true or not, all I can say is where my source was.

COMMISSIONER MONTENEGRO: I wanted to make it clear for the record that I believe that the Academy is training officers properly in the choke hold. I have observed them at the Academy. And if it was a statement that we could substantiate — but after observing the training methods at the Academy, I can speak very freely, and indicate that the officers are trained properly.

Now, what happens out in the field, maybe they forget. That's something else. But as far as the training methods,

they're the best, as far as this type of thing. I just wanted to make it perfectly clear for the record.

REV. HODEN: I did speak with Mr. Calvin (phonetic spelling) before I came here. And he himself told me that he had been choked out — I think as an experiement [*sic*] — and he did tell me the training was very, very good. So, I have not come here to tear down your training program.

There is, according to the information I had, one officer who obviously got it. And, two, I don't think that in the training program, the people are fighting for their lives. In other words, you can't really, actually put reality in the field. But the dangers and the fact of what these doctors have said — I think both of our statements are important.

COMMISSIONER MONTENEGRO: That's true. There's always room for improvement. But I wanted to make certain that the general public understands that the Academy is very much concerned. And I have observed and I do support the training at the Academy. Of course, again, there's room for improvement. And I want the point to be perfectly clear that observing the officer trained in recruits has an insight to attest to their efficiency to the Academy.

REV. HODEN: Maybe we could look into this Mr. Papke, P-a-p-k-e.

COMMISSIONER REINHARDT: Thank you very much for coming.

I think some of the points you mentioned, which are well-taken, have been considered by the Chief, and are covered in his report. He says that there is going to be an annual training program in the use of the choke hold: people will be trained, certified, and qualified. And secondly, the additional training will include the point you mention of alternative methods of trying to deal with people peacefully and talk them out of their activities before force is used.

And, finally, your other suggestion that there really was an intermedial step between the wrist control and the choke hold.

I assume, Chief, that we are considering those possibilities of finding — I had somewhat the same reaction. I wondered if there was something in between. But I know that's the kind of effort you are undertaking to see if there is. And if we can develop and discover one, we will do it.

But I thank you for your presentation.

REV. HODEN: Thank you very much.

COMMISSIONER REINHARDT: If we had acted on the motion before that the reference — if there is not a motion to reconsider, the action will stand.

All right.

. . . . . .

**Los Angeles Police Department, Intradepartmental Correspondence Regarding "Statistics on Use of Control Holds and Related Training," February 21, 1979 (Exhibit 30).**

Intradepartmental Correspondence

February 21, 1979
2.2

TO: Commanding Officer, Personnel and Training Bureau

FROM: Commanding Officer, Training Division

SUBJECT: STATISTICS ON USE OF CONTROL HOLDS AND RELATED TRAINING

This report is prepared in response to your directive to provide information on the following: (1) The number of police incidents involving the use of unconscious-rendering holds and subsequent injuries; (2) the number of times Training Division personnel have reviewed presentations from outside sources on alternative methods of physical control; and (3) the number of officers who have completed the Centralized Self-Defense/CPR Training, to date.

(1) *ARREST SITUATIONS INVOLVING THE USE OF UNCONSCIOUS-RENDERING HOLDS AND RELATED INJURIES*

Training Division contacted Automated Information Division to ascertain if any automated system available to the Police Department maintained information that in any way identifies "altercation" arrest reports. It was found that no computer system stores this type of information. In view of this, Training Division tabulated the statistical data from available "altercation" arrest reports. The following totals represents the pe-

riod of November 13, 1978, through February 13, 1979.

| Self-Defense Technique | Times Used | Visible/ Complained of Injuries | Suspect Rendered Unconscious |
|---|---|---|---|
| Wrist Lock | 29 | 0 | 0 |
| Twist Lock | 7 | 1 | 0 |
| Bar Arm | 72 | 12 | 18 |
| Carotid | 39 | 4 | 5 |
| Chancery | 0 | 0 | 0 |
| Baton | 40 | 8 | 0 |
| Kicks | 11 | 1 | 0 |
| Other | 85 | 0 | 0 |
| | 283 | 26 | 23 |

NOTE: There is a strong possibility that the above date [*sic*] may not include all altercation reports. The system by which altercation reports are forwarded to Training Division (Special Order No. 4 dated February 9, 1978) has no control method to ensure record unit compliance; therefore, the above statistics reflect only available information. In an effort to gain uniformed compliance throughout the Department, Training Division is initiating a teletype reminder directed to all Department record units.

(2) *PRESENTATIONS BY OUTSIDE SOURCES ON ALTERNATIVE PHYSICAL CONTROLS*

Training Division has continued its interest in presentations of alternative physical control techniques which are presented by outside sources. Normally, the demonstrations are presented at the Academy and viewed by the Commanding Officer, the Lieutenant in charge of Recruit Training, and members of the Phys-

ical Training staff. Training Division has been involved with the following outside sources in investigating alternative physical control information.

During June, 1978, Training Division met with Master Takayuki Kabota, President of the International Karate Association to review "Kubaton" training as a self-defense technique.

During August, 1978, in response to an application to the Superior Court for a temporary restraining order against the use of the Department's control holds, Training Division contacted 46 police agencies within Los Angeles County (in addition to several agencies outside of the State) regarding the use of control holds and alternative methods in use by other police departments. None of the agencies surveyed employed, nor could they offer, alternative techniques. At the same time, several prominent physicians throughout the nation were consulted with the same result.

On September 6, 1978, Training Division staff discussed a 32-hour self-defense course with Mr. Hidetake Nishiyama, Chairman of the All-American Karate Federation. The program offered no alternatives to the Department control holds. Mr. Nishiyama commented that when properly applied, the bar arm and carotid unconscious-rendering holds were very effective.

On September 26, 1978, Mr. Rorion Gracie, Vice President of the Federation of Jujitsu of Rio de Janero, [*sic*] Brazil, presented his application of Jujitsu techniques for police officers. His techniques were appropriate and closely resembled the judo-related techniques currently taught, however, his proposal of a personally conducted training course for the Physical

Training staff at $720 per instructor was cost prohibitive.

Training Division also reviewed a presentation of Hwa-rang Do techniques conducted by John S. Huppuch, Jr. and Master Kim of the World Hwa-rang Do Association. Hwa-rang Do is a combination of all major martial arts and could also be classified as "street fighting." This technique is not applicable to police work since our objective is control and not the annihilation of the suspect.

Two Training Division officers assigned to Physical Training attended the 5-day Officers' Survival School, held at the California Specialized Training Institute, San Luis Obispo, in January, 1979. The school's use of force doctrine included many LAPD policies and techniques that are currently taught at Training Division; however, their approach to practical street application was thought to be too severe and not compatible with this Department's police/community relations goals. Their demonstrated "Roth" baton techniques have been accepted as appropriate and Training Division adjusted recruit training to include these techniques following a Division instructor's attendance at the school approximately two years ago.

A discussion and presentation has been scheduled for February 16, 1979, with Mr. Sam Jin-Suh, a karate expert in Tak-won-Do, relative to new and useable techniques.

Additionally, Training Division maintains on-going contact with Master Takayuki Kabota, former Department self-defense advisor.

Unfortunately, none of these experts have been able to suggest or recommend any possible alternatives to

the currently taught unconscious-rendering hold. Most martial arts use similar "choking" techniques and their proponents state that the bar arm and carotid are safe, effective control techniques.

(3) The Department's Centralized Self-Defense Refresher Course commenced on October 23, 1978. As of February 13, 1979, 708 police officers and 29 station officers (737 employees total) had attended the refresher training.

THOMAS G. HAYS, Captain
Commanding Officer
Training Division

**Declaration of Pascal Kenneth Dionne in Opposition to the Issuance of a Permanent Injunction or a Declaration That the Bar-Arm or Carotid Control Holds Are Unconstitutional Application of Force.**

United States District Court Central District of California.

(Title omitted in printing).

Case No. 77-0420-RMT

I, PASCAL KENNETH DIONNE, declare as follows:

1. My name is Pascal K. Dionne. My business address is 1880 North Academy Drive, Los Angeles, California 90012. My business telephone number is (213) 485-3151. I have been a Los Angeles Police Officer since October 5, 1970. On November 19, 1976, I was promoted to the rank of sergeant of police. Presently, I am the officer-in-charge of the Physical Training and Self-Defense Unit, Training Division, and have been assigned to this unit since April of 1978.

2. As a police officer, I have worked Patrol, Special Problems, School Car, and as the recruit class leader at the Academy. As a sergeant, I worked as a field supervisor prior to my current assignment to the Physical Training Unit, Training Division.

3. I received a Bachelor Degree in Public Administration from the University of Redlands in 1977. I have a lifetime community teaching credential and taught a course in police self-defense at East Los Angeles College, Administration of Justice Department, from 1975 to February of 1980.

4. As the officer-in-charge of the Physical Training and Self-Defense Unit, Training Division, I am responsible for the administration, management, and instruction of the recruit physical fitness and self-defense curriculum, the in-service centralized self-defense refresher course, the ad-

vanced officer in-service self-defense training, supervisory development self-defense training, reserve officer recruit and in-service self-defense and physical fitness training, station officer self-defense training, and the recruit basic tactics course. Additionally, I am responsible for the review and statistical recordation of all altercation reports and I am the Department representative and an expert relative to the use of force and instruction thereof.

5. In the balance of this declaration, I shall set forth information regarding the Los Angeles Police Officers' use of force (with particular emphasis on the control holds) as taught at the Academy and, to the extent of my knowledge, as it is applied in the field. Some of this information pertains to the Department's policies and philosophy and in this regard, I have been authorized to speak on behalf of the Department.

6. *Use of Force*

(a) *Department Policy:*

The following statement appears in the Los Angeles Police Department Manual Section 1/225 and reflects the Department's policy:

> "In a complex urban society, officers are daily confronted with situations where control must be exercised to effect arrests and to protect the public's safety. Control maybe achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have ben exhausted or would clearly be ineffective under the particular circumstances. Officers are permitted to use whatever force that is reasonable and necessary to protect others or themselves from bodily harm."

(b) *Philosophical Basis:*

The Department believes that no greater than necessary force should be used in controlling a suspect. Department objectives are thwarted by the use of force, and, therefore, verbalization (i.e., advice, warnings, and persuasion) is emphasized as the most desireable [*sic*] method of control in all situations. The objective of officers in a potential or actual altercation is always control of the situation. Therefore, officers must react by escalation or descalation [*sic*] and use only that force which is necessary and reasonable, depending on the reactions of the suspect. If the suspect forceably resists an officer's lawsful direction, the officer may escalate only to that degree of force necessary to establish control. Likewise, if the suspect reduces the amount of force he is using against the officer, the officer must de-escalate to the minimum level of force at which control of the situation can be maintained.

(c) *Escalation and De-Escalation of Force:*

Under Department policy an officer confronting a suspect has several levels of force he may use, each representing a reaction to the actions of the suspect. If a suspect is cooperative, an officer utilizes the minimum level of force, verbalization. Depending on the suspect's reactions, an officer may escalate his level of force only to that level needed to gain control. An officer will respond with deadly force when necessary to protect human life, exercised only when all reasonable alternatives have been exhausted or appear impracticable. In accordance with this escalation/de-escalation policy, the suspect by his actions determines the tactics used by the officer.

(d) *Description of Force Levels:*

The Department instructs its officers to escalate or de-escalate the level of force according to the actions of a suspect. The levels of force available to an officer are as follows:

(1) *Verbalization.* Verbalization encompasses advice, warnings, and persuasion. If a suspect is cooperating and complying with the directions of an officer, the only force justified by an officer is verbalization.

(2) *Firm Grip.* When verbalization is not effective in controlling a situation, an officer may be able to gain control through the use of a firm grip on the suspect's arm (the "position of advantage").

(3) *Pain Compliance Holds.* These holds include the front and rear wrist lock and the twist lock. When a firm grip is not effective in controlling a suspect, a wrist or twist lock may be all the force necessary to gain control of a suspect. Additionally, an officer may utilize the pain compliance techniques (i.e., arm drag, arm lock, etc.) currently taught in the Monadnock Pr 24 basic Certification Course. If the suspect's actions are violent and very aggressive, these techniques may not be effective and an officer may then have to escalate his level of force. Wrist and twist locks cause pain only during their application.

(4) *Control Holds.* The next level of escalation involves the use of control holds. An officer uses these control holds to gain control of a suspect who is violently resisting the officer or trying to escape. An officer, in learning the control holds, is advised that application of the holds over an extended period of time may cause injury or death. Exh. 68, p. 53 For this reason, officers are instructed to use certain holds only as a means of gaining initial control. These holds will be discussed in more detail below.

(5) *Self Defense Techniques.* These include the baton (both the straight 26-inch wood baton, and the Manadnock Pr 24 baton authorized by this Department. Once certified, an officer may use and carry either baton.), karate kicks and certain Judo throws. An Officer would use the above self-defense techniques to defend against bodily attack to his person when other techniques have not been or would not be successful. These techniques will allow an officer to both defend himself and gain control of a combative suspect. Since these techniques may cause injury, officers are taught only to use the amount of force which is necessary to control a suspect. The baton techniques that are taught utilize the weight and strength of the officer so that the baton may be applied with maximum force.

(6) *Deadly Force.* Section 1/556.40 of the Los Angeles Police Department Manual authorizes the use of deadly force when it appears necessary by an officer (A) to protect himself or others from immediate death or serious bodily injury, (B) to prevent a crime where the suspect's actions place persons in jeopardy of death or serious bodily injury, or (C) to apprehend a fleeing felon for a crime involving serious bodily injury or the use of deadly force where there is a substantial risk that the person whose arrest is sought will cause death or serious bodily injury to others if apprehension is delayed. The officer must, of course, respond to deadly force presented against him by either using deadly force or disarming the suspect. The control holds are generally not used in this circumstance.

(e) *Rejected Methods of Control:*

The following levels of force have been eliminated or rejected by the Department:

(1) *"C" Clamp.* This technique consists of forming the hand in the shape of a "C" and gripping the front

of the neck. It was eliminated by the Department as a self-defense technique due to the possibility of injury to the trachea.

(2) *Forearm Smash to the Trachea.* This technique was eliminated due to the possible injury to the trachea.

(3) *Front Bar-Arm (Front Headlock) Control.* This control was eliminated from the regular self-defense program and placed in the enrichment portion of the program. If used improperly, this technique can cause injury to the neck area. The front bar-arm control hold technique is presented as a suitable measure for controlling a suspect who is charging the officer.

(4) The Department maintains a receptive posture with regard to both internal and external suggestions relative to self-defense techniques and devices and the Training Division has participated in many resultant demonstrations of self-defense techniques. There has never been any techniques or device offered by any individual or group that could effectively replace the family of unconscious rendering holds. Generally, when the individuals are asked to show a technique that (1) is used to control a combative suspect *without* injury and (2) can be taught within a reasonable time frame, the individuals have produced techniques that do result in injury. Our philosophy of "control without injury" is foreign to most martial artists and generally of minimal concern to them when in a combative situation.

### 7. *Use of Excessive Force*

(a) *Department Policy:*

Department Manual Section 1/225 (Use of Force), previously cited, describes the policy relative to an officer's use of force.

(b) *Department Discipline of Officers:*

Manual Section 1/285 describes the Department's policy on discipline as follows:

> "It is essential that public confidence be maintained in the ability of Department to investigate and properly adjudicate complaints against its members. Additionally, the Department has the responsibility to seek out and discipline those whose conduct discredits the Department or impairs its effective operation. The rights of the employees as well as those of the public must be preserved, and any investigation or hearing arising from a complaint must be conducted in an open and fair manner with the truth as its primary objective. The Department accepts complaints against its members and fully investigates all such complaints to the appropriate disposition."

Manual section 3/805.26 defines misconduct as follows:

> "(1) Commission of a criminal offense, (2) neglect of duty, (3) violation of Department policies, rules or procedures, or (4) conduct which may tend to reflect unfavorably upon the employee or the Department."

An allegation of misconduct received from any source constitutes a personal complaint (Manual Section 3/810.10) and shall be accepted and recorded on a Personal Complaint Form 1.18 (Manual Section 3/810.20). Each complaint of misconduct is investigated by the Department and then adjudicated administratively. For the purposes of disposition, complaints are classified as follows (Manual Section 3/820.20): (1) unfounded — when investigation indicates the act complained of did not occur; (2) exonerated — when the investigation indicates that the act occurred, but the act was justified, lawful and proper; (3) not sustained — when the investigation does not clearly establish the truth of the allegations made; (4) sustained — when the investigation

discloses the act complained of did occur and constitutes misconduct; and (5) misconduct not based on a complaint — when the investigation discloses misconduct which is not part of the original complaint. The penalty for a sustained complaint ranges from a warning to removal via a Board of Rights proceeding (Manual Section 3/830.30).

8. *Training of Department Personnel:*

(a) *Academy Training:*

The current recruit officer curriculum encompasses 960 hours over a 24-week period. Approximately 45 hours of physical training and 140 hours of self-defense training is provided. The approximate number of hours for each segment of the 185 hour self-defense and physical training program is listed below:

| *TRAINING MODE* | *APPROXIMATE HOURS* |
|---|---|
| *Lecture* | |
| Physical Training Orientation | 2.0 |
| Officer Safety | 4.2 |
| Necessary Force | 3.3 |
| Nutrition | 2.0 |
| Physical Conditioning | 2.0 |
| Department Athletic Programs | 2.0 |
| *Demonstration* | |
| Interrogation Situation | 1.0 |
| Interrogation Position | 1.0 |
| Advantage Right and Left | 2.0 |
| Standing Cursory Search | 4.0 |

| *TRAINING MODE* | *APPROXIMATE HOURS* |
|---|---|
| *Demonstration* | |
| Arrest Situations | 22.0 |
| Felony Standi Search | 3.0 |
| Felony Kneeling Search | 4.0 |

| | |
|---|---|
| Hot Felony Prone Search | 5.0 |
| Handcuffing | 5.0 |
| Front Wrist Lock | 3.0 |
| Twist Lock | 3.0 |
| Prisoner Transportation | 3.0 |
| Modified Carotid | 1.0 |
| Sit Down | 2.0 |
| Carotid | 3.0 |
| Locked Carotid | 2.0 |
| Chancery | 2.0 |
| Bar Arm | 2.0 |
| Roll Over and Handcuff | 2.0 |
| Defense From Frontal Attack | 2.0 |
| Choke Escapes | 1.0 |
| Hip Throw | 2.0 |
| Shoulder Throw | 2.0 |
| Front Head Lock Control | 1.0 |
| Front and Rear Gun Take-Away | 3.0 |
| Shotgun Take-Away | 2.0 |
| Baton | 15.0 |
| Kicks | 2.3 |
| Wrestling | 14.0 |
| Cardiopulmonary Resuscitation | 5.0 |
| Water Safety | 2.0 |
| Crowd Control | 3.0 |

| *TRAINING MODE* | *APPROXIMATE HOURS* |
|---|---|
| *Mediated Materials* (V.T. = Videotape; W.B. = Workbook) | |
| Get Suspect Out of Vehicle (VT) | .5 |
| Avoiding a Punch (VT) | .5 |
| Suspect Has You Covered (VT) | .5 |
| Search Techniques (VT & WB) | .8 |
| Approaching Suspect (VT) | .5 |
| Breaking Rear Choke (VT) | .5 |
| Breaking Front Choke (VT) | .5 |
| Physical Conditioning (VT & WB) | 1.0 |
| Sap (Leather Billy) (VT) | .2 |
| Squad Formations (VT & WB) | .5 |

| | |
|---|---|
| *Examinations and Testing* | |
| Physical Fitness Testing | 5.0 |
| Self-Defense Performance Testing | 8.0 |
| Physical Performance Testing | 4.0 |
| Cardiopulmonary Resuscitation (application) | .5 |
| Self-Defense Written Examination | 1.0 |
| Cardiopulmonary Resuscitation Written Exam | .5 |
| *Physical Training* | 40.0 |

The hourly delineation reflected above exceeds 185 hours due to inclusion of some training modules which are normally included in other functional training areas.

(b) *Post-Graduate Self-Defense Training*

Upon completion of recruit training, officers are assigned to geographic patrol areas in a probationary capacity, such status continuing until the conclusion of the eighteenth month subsequent to employment. Each probationer works under the direct supervision of an experienced and specially selected training officer. Should a probationary officer demonstrate a lack of proficiency or knowledge relative to self-defense tactics, he or she is either counseled or remediated so that he may perform at a level commensurate with established standards. In some instances, termination or other disciplinary action may be warranted. Additionally, remedial self-defense instruction is provided to other personnel when the need is indicated.

During the 45-minute roll call period which precedes each watch, field personnel and other designated officials receive various types of training. This training is generally tailored to meet the specific needs of personnel in each area. Effective March 7, 1979, the Department directed all areas to insure that two roll call training sessions be devoted to self-defense training each month. (See Exhibit 1, attached hereto.) Team training which affect all area personnel, are

conducted periodically. The training days are scheduled in accordance with bureau and area policy, each team having approximately 48-hour training sessions per year. Some form of self-defense, officer safety, or use of force is usually the subject of discussion or performance training at each session. Additionally, all field personnel who by the nature of their assignment are likely to be involved in an arrest or custody situation are required to attend the annual centralized self-defense refresher training course held at the academy.

Upon the completion of two years of service, officers are required to attend an advanced officer in service course which includes six hours of self-defense review. Similarly, officers with an excess of four years service attend another advanced officer school which includes three hours of self-defense training. Officers appointed to the rank of sergeant are required to attend a supervisory course. The following instruction is provided: baton training, two hours; escalation/de-escalation of force, two hours; officer safety, two hours; and civil disturbance (crowd control), one hour.

Training bulletins are written by the Department on various subjects pertaining to law enforcement, including self-defense. It is my understanding, based on what I have seen and heard, that these bulletins are sent to the various police stations for distribution. At these stations, my experience has been that these bulletins are sometimes discussed at roll call if deemed sufficiently important and are often distributed among the officers at the station. Additional copies of these bulletins are left in the roll call room so that absent officers may obtain a copy. In addition, each geographical station maintains a file copy.

9. *The Control Holds*

There are two major types of control holds used by the Department, the "Come Alongs" or "Pain Compliance Holds" and the "Unconscious Rendering Physical Control Holds."

(a) *The "Come Alongs/Pain Compliance Holds":*

These include the wrist locks and twist lock, both of which come from the martial art of Aikido. They are designed to provide a level of force to be used against passively resisting suspects and are generally employed after verbalization and the firm grip have failed. (The pain compliance holds are described in one of the Department's Training Bulletins, entitled "Control Holds Part I" (Volume X Issue, May 1978) (See Exhibit No. 2, attached hereto)).

(b) *The "Unconscious Rendering Physical Control Holds":*

The unconscious rendering physical control holds consist of the bar-arm, carotid, modified carotid, locked carotid, chancery, and front headlock (bar-arm) holds. The unconscious rendering control holds are described in one of the Department's Training Bulletins, entitled "Control Holds, Part II" (Volume X, Issue 13, May 1978) (See Exhibit No. 3, attached hereto). The entire family of control holds is derived from the martial art of Judo. The unconscious rendering control holds are regarded as providing intermediate levels of force and are used to control suspects who actually resist the officer.

The original unconscious rendering control hold taught by the Department was the bar-arm control, which was introduced in 1936 by Lieutenant Sam Posner, now retired. The bar-arm control is still part of the recruit training program, but is de-emphasized as a primary control hold. The carotid control hold has been the focus of instruction in the

regular program since 1969, and was shown to recruits as early as 1962. It is used on a violent suspect when a higher level of force is not necessary. The chancery control hold is primarily designed for control of a stronger or larger suspect by a smaller officer.

The carotid control hold generally cannot be applied when the officer and suspect are standing. This is especially true when the officer is shorter than or the same height as the suspect. For this reason, officers are instructed to gain immediate control by means of the modified carotid control hold. If the modified carotid fails, then a bar-arm is authorized. Initial control requires that the suspect be brought to the ground so that the carotid hold may be applied.

The Department presently teaches and emphasizes the use of a modified carotid for initial control, but still teaches and authorizes the use of a bar-arm control hold for initial control if necessary. The Department has considered and rejected the use of other take-down techniques (such as those in which a suspect's feet are knocked out from under him or her) because of the danger of injury to the suspect and the higher degree of martial arts proficiency required for such techniques.

The Department has learned, and I know from personal experience, that once the holds are applied in most cases the suspect gives up and there is no need for the officer to render the suspect unconscious.

10. *Experience With The Holds*

(a) *At The Academy:*

To my knowledge, Academy training records are not available to statistically reveal the number or nature of injuries, recruits or in-service officers received while involved in the training and/or practical application of unconscious rendering holds. My duty assignments as both the recruit class leader from January, 1974, through November, 1976, and as the Sergeant of the Physical Training Unit provided me with in-depth exposure and awareness of the nature and severity of injuries to trainees as the result of control holds. I do not recall any serious injuries, and the majority of injuries sustained were cervical and trachea strains. I do not recall any recruit being unable to continue training after a short healing period and the extent of discomfort was generally a minor sore throat or stiff neck. To my knowledge there have been no fatalities involving recruits because of these control holds.

(b) *In The Field:*

Statistics on injuries involving control holds and arrestees are not readily available. To my knowledge, the Department does not maintain a statistical record of injuries to suspects. The Department's contract hospitals do keep records, but in order to obtain statistical information, a hand search of their medical treatment records would have to be conducted. To my knowledge, there is no central location where records of injuries to arrestees are kept.

The Physical Training Unit is also responsible for the review of all altercation reports forwarded to the Training Division. A statistic recordation system was implemented February of 1979, to ascertain the frequency of use of various techniques. The altercation summary report (See Exhibit No. 4, attached hereto) reflects the number of times

unconscious rendering holds were utilized by officers. The summary indicates that the carotid control hold was used more frequently than the bar-arm technique when a unconscious rendering hold was used. Additionally, the summary evidenced the fact that unconscious rendering holds as a family were necessary and used more than any other level of force. In my opinion the statistics in Exhibit No. 4 is not inclusive of all altercations that occur between officers and citizens within the City of Los Angeles.

When on field assignments, I have observed other officers apply the various control holds on numerous occasions. To my knowledge, on none of these occasions did the hold cause death or injury.

11. *Complications Caused By Drugs*

In my ten years experience as a police officer I have had to arrest or be in contact with suspects who were under the influence of drugs or alcohol. It is been my experience that these persons while under the influence do not behave in a normal manner.

In field operations dealing with hostile suspects, possibly or probably under the influence of PCP, it is Department policy that prior to an officer attempting to effect control, he *shall* request and wait for back up which includes additional officers and/or equipment. Currently the Department is involved in the evaluation and testing of newly developed control devices to deal with PCP suspects or other suspects who are under the influence of drugs.

12. *Use Of Force By Other Enforcement Agencies*

To ascertain the current use of force policy of other law enforcement agencies both locally and nationwide, the Physical Training Unit conducted a survey of sixty (60) agencies. The attached exhibit (Exhibit No. 5) reveals the policies

and practices of those agencies relative to the use of force and unconscious rendering holds as of August, 1980. As indicated, 80% of those surveyed do not have a use of force policy or philosophy other than as directed by the Penal Code, *i.e.*, reasonable and necessary. Almost all authorize the use of the carotid control hold (90%) and the majority (53.33%) authorized the use of the bar-arm control hold. Additionally, 56.67% authorize or use the chancery control hold.

Only 11.66% were aware of any study or litigation relative to control holds and only 3.33% stated that their agencies were being challenged or threatened regarding justification for unconscious rendering holds.

13. *Relative Safety Of The Holds*

The philosophy of all Los Angeles Police Department self-defense techniques is the control or to contain a suspect using a minimum of force. As a suspect escalates in his combative efforts we increase our level of force using the approved technique that will effectively control the suspect or the situation.

The safety of both officer and the suspect is given the highest priority. All of our self-defense techniques are designed to minimize injury or control and contain the combative suspect. Our officers receive extensive training in both the use of force and the application of these self-defense techniques and upon graduation from the Police Academy have satisfactorily demonstrated their proficiency in these areas.

The self-defense techniques have been designed and examined by experts in the fields of martial arts, wrestling, boxing and human anatomy and represent over forty years of development and refinement. All of these experts agree that if applied correctly the suspect will experience no after

effects or injury. Unfortunately, there have been exceptions and there have been injuries both in the field and at Academy. However, improper application was the cause in most cases and when compared to the vast number of combative police contacts over the years the number of injuries are minuscule.

Our officers rely on all self-defense techniques taught to properly escalate up the use of force ladder. We start with verbalization, then pain compliance (twist locks and wrist locks) and then unconscious rendering control holds (bar-arm, carotid, modified carotid artery, and chancery) then the baton and defensive kicks and finally deadly force (revolver). If unconscious rendering holds were eliminated, our officers would be forced to escalate from simple pain compliance holds to the use of their batons, an extremely destructive weapon. This would greatly increase both the number and the nature of injuries received by combative suspects and violate our Department's primary objective regarding the use of force — to contain or control a suspect using a minimum of force and preventing injury to both officer and the suspect.

As the officer-in-charge of the Physical Training and Self-Defense Unit, I have reviewed several studies concerning the control holds. In 1970, the Department conducted a control hold study (See Exhibit 6, attached hereto) and in 1975 produced the unconscious rendering control hold study (See Exhibit 7, attached hereto) and is incorporated herein by reference.

The conclusions of all these studies are basically the same:

a. The use of the control holds reduces the possibility of injury to the officer and suspect as opposed to other methods of control which require a higher level of force.

b. If the control holds were eliminated, there would be no self-defense techniques available to adequately replace them.

c. If the control holds are applied improperly, there is a possibility that a suspect will be injured.

In addition to these studies, I have read several books on self-defense techniques for law enforcement officers. To date, I have been unable to find any control hold as effective as the ones currently being taught at the Academy.

In my opinion, the control holds taught and used by the Los Angeles Police Department are effective and humane when properly applied.

14. If called as a witness, I would competently and truly testify as set forth in this declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of September 1980, at Los Angeles, California.

/s/ Pascal K. Dionne
PASCAL K. DIONNE

EXHIBIT 1

OFFICE OF OPERATIONS

*NOTICE* March 7, 1979

TO: All Area Commanding Officers

FROM: Director, Office of Operations

SUBJECT: ROLL CALL TRAINING

Law enforcement is a very complex and demanding profession. Training has proven to be the best method to achieve the high professional standards traditionally set by the Los Angeles Police Department. One of the most opportune training periods available to Field Services Division commanding officers is the daily roll call training period.

This portion of the work day, if utilized properly, can greatly improve the performance and proficiency of field officers. It can be a significant factor in improving the confidence of officers, thereby enabling them to more effectively respond to routine problems as well as life endangering situations.

In an effort to maximize roll call training and to reduce the potential of injury to officers or members of the community, each deployment period, roll call training shall include the following:

2 Days — Tactics
2 Days — Control Holds
2 Days — Use of Force and Department Shooting Policy

Appropriate Training Bulletins and other training material are available on the above subjects and should be used as a guide in presenting this training.

Command emphasis is necessary to ensure the maximum use of roll call training periods.

/s/ Louis L. Sporrer
LOUIS L. SPORRER, Assistant Chief
Director
Officer of Operations
DISTRIBUTION "0-1"

EXHIBIT 2

[Letterhead]

TRAINING BULLETIN

*Volume X, Issue 12* *May, 1978*

## CONTROL HOLDS
## PART I

Control holds are an essential part of the use of force as discussed in the Use of Force training bulletins, Volume X, Issues 10 and 11. Within the theory of escalation and de-escalation, suspects usually cooperate with verbal requests. At times, an officer may progress to the use of a firm grip to overcome a suspect's passive resistance. Once the suspect escalates to aggressive resistance, an officer may utilize pain compliance holds, in the form of a twist lock or a wrist lock, to restrain the suspect. If the suspect continues to escalate resistance or bodily attacks the officer, a control hold may be required. Department approved control holds include the carotid, modified carotid, locked carotid, bar arm, and chancery. Once a suspect de-escalates resistance, the officer also must de-escalate the use of force to the level necessary for continued compliance.

This series of training bulletins will discuss the control holds approved for use by officers of the Los Angeles Police Department. Part I will demonstrate the proper use of the wrist lock and twist lock. Part II will show the proper use of the modified carotid, the carotid, locked carotid, bar arm, and the chancery.

*NOTE:* In this bulletin, the techniques are demonstrated by a right-handed officer. Left-handed officers should be aware that these techniques are to be performed from the suspect's left side to protect the holstered weapon. A left-handed officer would invert these techniques accordingly.

1

2

3

4

Twist Lock

The twist lock is applied from the position of advantage (photo 1) when the suspect is standing. At the position of advantage, the officer is to the right of the suspect. The officer is at a slight angle to the suspect. The officer's left foot is to the rear of the suspect's right foot. The officer's right foot is parallel to the suspect's right foot. The officer's right hand is grasping the suspect's right wrist. The officer's left hand is grasping the suspect's right elbow. On count one (photo 2), the officer pushes the suspect's elbow up with the left hand and twists the suspect's right hand counterclockwise until the edge of the hand is facing forward. On count two (photo 3), the officer drops the left hand down and grasps the edge of the hand, fingers into the palm and thumb on the back of the suspect's hand. Then the officer slides the right hand down and grasps the fingers tightly. On count three (photo 4), the officer applies a full counterclockwise twist of the suspect's wrist and pushes the wrist upward.

5

6

7

When the suspect is sitting, the officer again approaches the suspect from the right side and stands to the right rear of the suspect with the left foot forward. On count one (photo 5), the officer places his left hand on the suspect's right shoulder and grasps the suspect's right wrist with the

right hand, twisting the hand clockwise, palm up. On count two (photo 6), the officer slides the right hand down and tightly grasps the fingers as the left hand grasps the edge of the suspect's hand, fingers into the palm, thumb on the back of the suspect's hand. On count three (photo 7), the officer applies a full counterclockwise twist of the suspect's wrist. Simultaneously, the officer pushes the wrist upward, forcing the suspect to stand up. Once the suspect stands, the twist lock is complete (photo 4).

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11

If the suspect is in a supine position, the officer again approaches the suspect from the right side. The officer kneels on his left knee near the suspect's right shoulder. On count one (photo 8), the officer grasps the suspect's right wrist with the left hand and raises the hand up over the suspect's chest, palm up. On count two (photo 9), the officer grasps the suspect's fingers with the right hand and pulls the hand to the right. The officer's left hand reaches under the suspect's right hand and grasps the edge of the hand, fingers into the palm, thumb on the back of the suspect's hand. On count three (photo 10) the officer executes a full pressure counterclockwise twist on the suspect's wrist and pushes the hand forward until the suspect sits up. The officer then drives the wrist upward until the suspect stands (photo 11).

12

13

Wrist Lock

When the suspect is in a standing position, the wrist lock also is applied from the position of advantage (photo 1). On count one (photo 12), the officer drives the left arm between the suspect's right arm and body with a closed fist and then drives the left forearm back into the crook of the suspect's right elbow. This will push the suspect's elbow into the officer's stomach to establish a firm base for the wrist lock. Simultaneously, the officer, with the right fingers across the back of the suspect's right hand, applies pressure towards the suspect's elbow bringing the suspect's forearm up to a forty-five degree angle with the ground. On count two (photo 13), the officer places the fingers of the left hand across the fingers of the right hand and slides the fingers

over the suspect's knuckles, thumbs into the palm. Pressure is applied towards the suspect's elbow.

14

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17

If the suspect is sitting, the officer approaches from the suspect's right rear. The officer places the left hand on the suspect's right shoulder and grasps the suspect's right wrist with the right hand (photo 14). On count one (photo 15), the officer kneels on the left knee and places the left hand behind the right elbow and applies pressure forward to establish a firm base. The right hand applies pressure on the back of the hand towards the suspect's elbow. On count two (photo 16), the officer pushes the suspect's elbow into the stomach with the left hand. Then the left fingers are placed over the right fingers, thumb into the suspect's palm. On count three (photo 17), the officer applies full pressure and stands the suspect up.

18

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21

When the suspect is in a prone position, the officer again approaches from the right side and kneels on the left knee. The officer places the left hand on the suspect's right shoulder and grasps the suspect's right wrist with the right hand (photo 18). On count one (photo 19), the officer places the left hand behind the right elbow and slides the right hand down with the fingers over the knuckles and the back of the suspect's hand, thumb into the palm. The officer applies pressure with both hands, establishing a firm base with the left hand. On count two (photo 20), the officer places the suspect's elbow in the stomach with the left hand to establish a permanent base. Then the officer places the left fingers

over the right thumb, into the suspect's palm, and applies full pressure. On count three (photo 21), the officer stands the suspect up.

Summary

When an officer attempts to control a suspect and the suspect resists, the officer is justified in utilizing only that amount of force necessary and reasonable to gain the suspect's compliance. Each situation dictates the amount of force necessary. Within the theory of escalation and de-escalation, once verbalization and a firm grip prove ineffective, an officer may be justified in using a pain compliance hold. The twist lock and the wrist lock are the approved pain compliance holds for the Los Angeles Police Department. By utilizing these holds, an officer is afforded maximum safety while subjecting the suspect to a minimum possibility of injury. However, if the suspect's resistance escalates to bodily attack, an officer may be required to employ a control hold. Part II of this series will demonstrate the authorized Department control holds: the modified carotid, the carotid, locked carotid, the bar arm, and the chancery.

EXHIBIT 3 — Training Bulletin, Control Holds, May 1978 — can be found at 41a-51a of the petition for certiorari

## EXHIBIT 4

## ALTERCATION SUMMARY

| Date | Total Altercations Reported | Total Unconscious Rendering Holds Reported | Type — Bar Arm | Type — Carotid |
|---|---|---|---|---|
| 2-79 | 54 | 53 = 98% | 33 = 61% | 20 = 37% |
| 3-79 | 91 | 51 = 56% | 32 = 35% | 19 = 21% |
| 4-79 | 78 | 55 = 71% | 30 = 41% | 25 = 32% |
| 5-79 | 60 | 38 = 63% | 14 = 23% | 24 = 40% |
| 6-79 | 68 | 35 = 51% | 12 = 18% | 23 = 34% |
| 7-79 | 124 | 60 = 48% | 20 = 16% | 40 = 32% |
| 8-79 | 117 | 65 = 56% | 24 = 21% | 41 = 35% |
| 9-79 | 108 | 44 = 41% | 13 = 11% | 31 = 29% |
| 10-79 | 91 | 39 = 43% | 10 = 11% | 29 = 32% |
| 11-79 | 72 | 42 = 58% | 11 = 15% | 31 = 43% |
| 12-79 | 71 | 43 = 61% | 7 = 10% | 36 = 51% |
| 1-80 | 62 | 40 = 65% | 7 = 11% | 33 = 53% |
| 2-80 | 63 | 34 = 54% | 8 = 13% | 26 = 41% |
| 3-80 | 43 | 27 = 63% | 2 = 5% | 25 = 58% |
| 4-80 | 50 | 38 = 76% | 7 = 14% | 31 = 62% |
| 5-80 | 55 | 30 = 55% | 3 = 5% | 27 = 49% |
| 6-80 | 53 | 12 = 22% | None Reported | 12 = 23% |
| 7-80 | 32 | 32 = 100% | 4 = 13% | 28 = 88% |

## EXHIBIT 5

| USE OF FORCE SURVEY OF OUTSIDE AGENCIES | Use of Force Policy | Use of Bar Arm | Use of Carotid | Use of Chancery | Any studies being conducted | Unconscious Rendering Holds being questioned | Sworn Personnel |
|---|---|---|---|---|---|---|---|
| 1. Alhambra | No | Yes | Yes | Yes | No | No | 86 |
| 2. Anaheim | No | No | Yes | No | Yes | No | 300 |
| 3. Arcadia | No | No | Yes | No | No | No | 65 |
| 4. Army | Yes | No | Yes | No | Yes | No | 200 |
| 5. Azusa | No | Yes | Yes | Yes | No | No | 44 |
| 6. Baldwin Park | No | Yes | Yes | Yes | No | No | 58 |
| 7. Bell | No | Yes | Yes | Yes | No | No | 35 |
| 8. Bell Gardens | No | Yes | Yes | Yes | No | No | 45 |
| 9. Beverly Hills | Yes | No | Yes | Yes | No | No | 111 |
| 10. Boston | No | No | No | No | No | No | 12,500 |
| 11. Burbank | Yes | Yes | Yes | Yes | No | No | 148 |
| 12. Chicago | No | No | No | No | Yes | No | 2,200 |
| 13. Compton | Yes | Yes | Yes | No | No | No | 145 |
| 14. Covina | Yes | No | Yes | Yes | No | No | 50 |
| 15. Culver City | No | Yes | Yes | Yes | No | No | 90 |
| 16. Dallas | No | Yes | Yes | No | No | No | 2,000 |
| 17. Denver | No | Yes | Yes | Yes | Yes | No | 1,400 |
| 18. Downey | No | Yes | Yes | Yes | No | No | 100 |
| 19. El Monte | No | Yes | Yes | Yes | No | No | 89 |
| 20. El Segundo | No | No | Yes | No | No | No | 59 |
| 21. FBI | Yes | Yes | Yes | No | Yes | No | 400 |
| 22. Gardena | No | No | Yes | Yes | No | No | 90 |
| 23. Glendale | Yes | No | Yes | Yes | Yes | No | 162 |
| 24. Glendora | No | Yes | Yes | Yes | No | No | 43 |
| 25. Hawthorne | No | Yes | Yes | Yes | No | No | 84 |
| 26. Hermosa Beach | No | Yes | Yes | Yes | No | No | 39 |
| 27. Huntington Park | No | Yes | Yes | Yes | No | No | 55 |
| 28. Inglewood | No | Yes | Yes | Yes | No | No | 175 |
| 29. Irwindale | No | No | Yes | No | No | No | 14 |
| 30. La Habra | No | Yes | Yes | Yes | No | No | 51 |

| | Use of Force Policy | Use of Bar Arm | Use of Carotid | Use of Chancery | Any studies being conducted | Unconscious Rendering Holds being questioned | Sworn Personnel |
|---|---|---|---|---|---|---|---|
| 31. Los Angeles Sheriff | No | No | Yes | No | No | No | 5,700 |
| 32. Long Beach | No | No | Yes | No | No | No | 600 |
| 33. Los Alamitos | No | Yes | Yes | No | No | No | 24 |
| 34. Manhattan Beach | No | Yes | Yes | Yes | No | No | 53 |
| 35. Maywood | No | Yes | Yes | Yes | No | No | 22 |
| 36. Miami | No | Yes | Yes | Yes | No | No | 600 |
| 37. Monrovia | No | Yes | Yes | No | No | No | 54 |
| 38. Montebello | No | Yes | Yes | Yes | No | No | 84 |
| 39. Monterey Park | No | Yes | Yes | Yes | No | No | 66 |
| 40. Navy — Long Beach | Yes | No | No | No | Yes | Yes | 55 |
| 41. New York | Yes | No | Yes | No | No | No | 22,000 |
| 42. Palos Verdes | No | Yes | Yes | No | No | No | 22 |
| 43. Pasadena | Yes | No | Yes | No | No | No | 187 |
| 44. Philadelphia | Yes | Yes | Yes | No | No | No | 7,300 |
| 45. Pomona | No | No | Yes | No | No | No | 150 |
| 46. Redondo Beach | No | No | Yes | No | No | No | 92 |
| 47. San Fernando | No | No | Yes | No | No | No | 34 |
| 48. San Gabriel | No | No | Yes | No | No | No | 50 |
| 49. San Marino | No | No | Yes | No | No | No | 25 |
| 50. Santa Monica | No | No | Yes | No | No | No | 125 |
| 51. Seal Beach | No | No | No | No | Yes | No | 44 |
| 52. Sierra Madre | No | No | Yes | No | No | No | 15 |
| 53. Signal Hill | No | No | Yes | No | No | No | 31 |
| 54. South Gate | No | Yes | Yes | No | No | No | 88 |
| 55. So. Pasadena | No | No | No | No | No | No | 35 |
| 56. Torrance | No | No | Yes | No | No | No | 224 |
| 57. USMC | Yes | Yes | No | No | No | No | 220 |
| 58. Vernon | No | Yes | Yes | Yes | No | No | 62 |
| 59. West Covina | No | No | Yes | No | No | No | 90 |
| 60. Whittier | No | Yes | Yes | No | No | No | 87 |

## EXHIBIT 6

Unconsciousness Rendering
Physical Control Holds Study
October 1975

COMMANDER SIDNEY E. MILLS, CHAIRMAN, COMMANDER THOMAS P. MC TIGHE, ALTERNATE CHAIRMAN; COMMANDER LLEWELLIS E. RITTER, MEMBER; COMMANDER JOHN B. DEMAREST, ALTERNATE MEMBER.

October 21, 1975

TO: Assistant Chief Daryl F. Gates, Chairman
Assistant Chief Louis L. Sporrer, Member
Policy Review Authority

FROM: The Ad Hoc Committee on Unconsciousness Rendering Physical Control Holds

SUBJECT: UNCONSCIOUSNESS RENDERING PHYSICAL CONTROL HOLDS STUDY

*BACKGROUND*

The Ad Hoc Committee on Unconsciousness Rendering Physical Control Holds was established by the Chief of Police on July 9, 1975, to study all unconsciousness rendering control holds currently taught by the Training Division and authorized for field use and to submit their conclusions and recommendations to the Policy Review Authority. The precept for the study is attached as Addendum 1. The study included, but was not limited to:

1. The unconsciousness rendering holds presently approved for inclusion in the police training curricula.
2. The physiological impact of such holds on the human body.

3. The current regulations and/or guidelines, if any, governing their adoption and use in various police situations.
4. The available alternatives to the use of unconsciousness rendering holds including their effectiveness, advantages, and disadvantages.

Throughout the investigation the Committee solicited divergent opinions of experts. The members of the Committee did not possess any preconceived ideas as to the pros and cons of the neck control holds and, therefore, critically analyzed the movements involved in the application of the holds and the relevance of their use. A practical demonstration and explanation was provided for those personnel not familiar with the holds in an attempt to procure alternatives to the existing unconsciousness rendering control holds.

Each person interviewed was asked if he was aware of any viable alternatives to the neck control holds; all responded negatively. They were also not cognizant of anyone who could recommend a suitable alternative.

The interviews included members of the Physical Fitness and Self-Defense Unit from Training Division, experts in various forms of martial arts and self defense, specialists in orthopedic surgery, a medical doctor, psychologists, specialists in civil liability, field police officers (both male and female), and command and supervisory officers.

*PHILOSOPHY*

The overall philosophy of self-defense training is to properly equip an officer with the self-confidence and ability to protect himself, his brother officer, and the citizens of Los Angeles. The officer's competence in self-defense includes mental attitude, command presence, proficiency in applying and retaining control holds, and experience. The key to the use of force is necessity and reasonableness. Control of the situation is the primary objective in any officer/citizen contact.

The basic philosophy and objective in the use of the unconsciousness rendering holds is control.

The Committee determined that four unconsciousness rendering control holds are being taught at Training Division: the carotid, the bar-arm, the chancery, and the front headlock. For the purpose of this report the term unconsciousness rendering control hold refers to one of the above mentioned holds, all of which have the potential of producing unconsciousness. The terms neck control hold and unconsciousness rendering control hold are used synonymously in this report.

The carotid control is the only hold designed to produce unconsciousness. Although the bar-arm, the chancery and the front headlock holds can be used for the purpose of rendering a person unconscious, their primary objective is to gain control of or compliance by the subject. They are also utilized to place a person in a position from which the carotid control can be applied if it becomes necessary to render an individual unconscious.

The carotid control is performed by placing an arm around an individual's neck with the elbow under his chin. Pressure is then applied to both sides of the neck with the biceps muscles and the forearm. A subject may be rendered un-

conscious, without applying pressure to the trachea, by restricting the supply of blood to the brain. The free flow of blood is curtailed by pressure to the carotid arteries located on either side of the neck. The carotid hold is intended for use only in controlling an extremely combative suspect when less forceful measures have failed. The carotid control is deemed the most effective and humane hold in controlling violent mental patients or other persons who have a high tolerance level to pain and are non-responsive to other restraints.

The bar-arm control hold is applied from the rear by placing an arm around the subject's neck, with the radial bone of the forearm across the front of the throat (trachea). The fist of the control arm is placed into the palm of the other hand to prevent dislodgment of the forearm and as a means of applying additional pressure to the throat area. The theory of the bar-arm control hold is that pressure applied to the trachea (windpipe) reduces the flow of oxygen, thereby reducing the will and the ability of the subject to further physically resist. Although unconsciousness can occur from excessive pressure to the trachea, the purpose of the bar-arm hold is to obtain control or submission of the subject swiftly while minimizing the hazard of injury to the subject or the officer utilizing the hold.

The chancery control is applied in the same manner as the bar-arm control except that the officer locks the fist hand into the inner elbow and locks the free hand behind the subject's head, thereby securing the hold and permitting the officer to apply pressure to the trachea and sides of the neck by forcing the subject's head forward. It is particularly effective for officers deficient in upper body strength who must control suspects who are bigger and stronger than the officer and whom he cannot control by other approved control holds. It also effectively prevents a powerful suspect

from pulling an officer's arm away from the throat while the hold is being applied.

The front headlock control is basically the same as the bar-arm control, however, the front headlock is applied from the front of an individual rather than from the rear. It is seldom utilized due to the accessibility of the officer's weapon to the subject while the officer is applying the hold. This technique is useful when an officer is the object of a sudden frontal attack and is unable to gain a better position of advantage.

A three-part Los Angeles Police Department Training Bulletin on control holds was published on July 31, 1972. The bulletin stressed that the unconsciousness rendering control holds were designed for control and should only be used when the situation necessitates such force. It also outlined the potential dangers to a suspect from the use of the holds (Addendum 2).

*RECOMMENDATIONS*

Based on a comprehensive examination of this Department's existing training program and the programs of other jurisdictions, the Committee recommends the following:

1. The unconsciousness rendering physical control holds currently taught at the Academy should be retained by the Department.
2. Academy and in-service training should stress the advantages to the officer in the use of oral persuasion to encourage cooperation and voluntary submission of persons who are to be taken into custody. Training Division currently devotes 100 hours of the total 800-hour recruit training curriculum to the cognitive aspects of the use of force. It should be made abundantly clear that it is Department policy to resort to physical controls only when reasonable efforts to orally gain

compliance are exhausted or become impracticable.

3. The risk of injury to subjects through excessive or prolonged application of neck control holds should continue to be stressed during recruit and follow-up self-defense training.
4. On-going follow-up training should be provided to field personnel of all ranks to review and reinforce proper self-defense techniques. Training Division has developed a decentralized self-defense training program which is in the approval cycle and seemingly fulfills this recommendation.
5. A continuing effort should be made to ensure uniformity of instruction in the philosophy, physiology, psychology, and methodology of the control holds. The success of this effort and the retention of the materials taught can be measured by the development of a written examination covering all aspects of the program.
6. Research should be conducted into the practicality of expanded use of leg constraints as an adjunct to the currently approved control holds as a means of retaining control of a violent subject who is or has been subdued. In any event, training in the use of leg constraints should be increased, and an evaluation of various types of leg constraint devices should be undertaken to determine the most appropriate device for police use.
7. The advantages of maintaining communication between officers during a physical encounter should be emphasized in an effort to make such communication a conditioned response. This will result in closer coordination of the physical efforts of those involved for the purpose of reducing

the incidents involving the use of inappropriate force.

8. A written-report should be submitted by the concerned officer(s) each time he utilizes an unconsciousness rendering hold. Supervisory review should be mandatory, and a supervisor should respond to the scene of the incident whenever feasible. Improper use of a neck control hold should result in appropriate corrective action.
9. The current staff of the Physical Fitness and Self-Defense Unit should be increased by one Sergeant II to provide the personnel necessary for continuous supervisory monitoring of the self-defense training program.
10. Combat and collegiate wrestling should be retained as part of the self-defense program. This training develops self-confidence, poise, and self-assurance. Two additional wrestling mats (heavy duty foam rubber) should be provided for the purpose of maintaining adequate training in collegiate and combat wrestling.

*FINDINGS*

The Committee investigated four specific areas of the unconsciousness rendering physical control holds. The findings are as follows:

1. *The present level at which unconsciousness rendering holds are approved for inclusion in the police training curricula.*

   The Los Angeles City Charter, Section 80, delegates to the Chief of Police the authority to administer the affairs of the Department as the general manager and chief administrative officer. He is empowered to take full charge of all work of the Department and is responsible for the proper administration of its affairs.

The delegation of authority given to the Chief of Police by the City Charter encompasses training of Department personnel. In order to accomplish the task of managing the affairs of the Department, the Chief of Police has delegated limited authority to his staff members to assist him in carrying out his numerous responsibilities.

On April 17, 1970, a Control Hold Committee study (Addendum 3) recommended retention of the unconsciousness rendering control holds. The recommendations of the Committee were approved by the Chief of Police, thus signifying his intention to retain exclusive authority to approve the use of the unconsciousness rendering control holds. This Committee's findings reinforce that decision.

2. *The physiological impact of such holds on the human body.*

Basically there are three types of injuries which can occur as the result of the neck control holds: 1) orthopedic injury to the bone structure, which in extreme cases could fracture a vertebral column; 2) injury to the trachea (windpipe), which if collapsed could cause suffocation; and, 3) injury to the brain caused by extended elimination of blood circulation.

The bar-arm control can cause injury to the cartilage surrounding the trachea, while the carotid control hold could result in injury to the circulatory system. However, if the holds are applied in a Department approved manner physical injuries are not likely to occur.

The extent of injury as a result of the use of any of the unconsciousness rendering control holds was determined to be less severe than the degree of injury which would occur from the use of any of

the alternative methods considered by the Committee.

3. *Current attitudes and/or guidelines, if any, governing their adoption and use in various police situations.*

   The specific guidelines governing the adoption and use of physical force are as follows:

   a. Advice, persuasion, and warning are the first steps to be taken to gain voluntary compliance.

   b. The amount of force authorized in any situation is that minimum amount necessary to overcome resistance and gain control.

   c. Only that force which is reasonable and necessary to gain compliance is justified.

   Voluntary compliance is first solicited by an officer in an attempt to carry out his duties. The decision as to the type and extent of force necessary to control a resisting or combative person ranges from pain compliance (wristlocks) and the unconsciousness rendering physical control holds to the use of the baton, and, as a last effort, deadly force. The type and extent of force is dependent upon the amount of resistance and the infinite other variables, such as the size, age, sex, strength, and abilities of a suspect as compared to the same characteristics possessed by an officer.

4. *Available alternatives to the use of unconsciousness rendering holds, including their effectiveness, advantages, and disadvantages.*

   The Committee determined that no viable alternatives exist as substitutes for unconsciousness rendering physical control holds currently taught at Training Division which would afford the same

measure of officer safety and minimize the risk and extent of injury to the person being taken into police custody.

*RESEARCH*

Alternative measures require considerable expertise before they can be properly applied and many are also variations of the neck control holds. Several would probably produce more serious injury, and officer safety would be further jeopardized due to unwise variations of body positioning.

It was the consensus of the medical authorities interviewed that the application of unconsciousness rendering holds in a Department-approved manner would not normally subject an individual to injury, and the only residual effects might be discomfort to the throat area for two to three days following the incident.

Further testimony from the City's Medical Director substantiated that few medical complaints are made by arrestees in the divisional jails or at the receiving and contract hospitals regarding injuries incurred from the use of neck control holds.

The Department's Staff Psychologist reported that the psychological impact on field officers, if the control holds were disapproved for use, would be a severe lowering of morale, an increase in fear and an escalation in the frequency and degree of force.

The martial arts and self-defense experts reported that any alternatives would require extensive training which is not possible within the time limitations of the 20-week Academy program or any reasonable extension of that time. Several years of training are required to achieve martial arts expertise. Once achieved, it requires nearly daily practice in order to maintain speed, reaction time, and skill. Various

control holds demonstrated by these experts subject the individual to a risk of injury more severe than the injuries which would be caused by the currently approved control holds. None of the techniques demonstrated provided the degree of control offered by those currently approved, and many required a level of physical strength which is difficult, if not imposible, for some officers to attain.

Addenda 8 through 10 include the qualifications of the Physical Fitness and Self-Defense Unit staff members, an index of interviews, and the statements of witnesses interviewed by the Ad Hoc Committee.

There have not been a significant number of injuries caused by these holds reported to the City in the form of civil action. The number of excessive force lawsuits against the City would not be decreased by elimination of these holds and might possibly be increased because of the escalation of higher levels of force to accomplish effective control of combative persons. Of equal importance to the Department is the fact that none of the holds reviewed by this Committee as substitutes for the holds presently taught at the Academy offer the same appearance of propriety to the public.

The Internal Affairs Division Annual Report disclosed that there were approximately four million police/citizen contacts during 1973. One complaint of misconduct resulted from each 3299 contacts. Only 166 complaints alleged excessive force. .0000415*

A later study was conducted by Internal Affairs Division, Civil Liability Section, on the number of assault and battery claims and lawsuits filed against the City in 1974 (Addendum 4). During this same period there were 281 *claims* alleging injury due to assault and battery by Los Angeles

*[Printer's note: the number .0000415 is handwritten.]

Police Department personnel. Of these claims, 137 were unfounded. The 144 actual injuries were incurred as follows:

| | |
|---|---|
| Bar-arm Control ..... | 52 |
| Chancery ..... | 1 |
| Carotid ..... | 0 |
| Front Headlock ..... | 0 |
| Baton ..... | 31 |
| Restrain the Hands .. | 36 |
| Other ..... | 24 |
| Total ..... | 144 |

Only 4 of the 115 *lawsuits* lost or settled in court trials during 1974 were a result of the use of the neck control holds. The carotid and chancery controls did not contribute to any lawsuits lost or settled. The baton caused 7 injuries, which is 75 percent more than the bar-arm control. Only 18 of the 115 lawsuits resulted in a monetary loss to the City.

A July, 1975, Department report, Attacks on Los Angeles Police Officers, indicated that in 1974, a total of 1253 officers were assaulted. There were 804 encounters where bodily force was used by suspects.

Various weapons were used in 61 batteries and 388 ADWs. Twelve officers were killed in the line of duty since 1965.

The Commanding Officer, Jail Division, reported a decrease in the number of altercations which occurred during the booking and processing procedure (Addendum 5). The reduction was realized after a policy was adopted requiring that a supervisor be present at all times in the prisoner processing areas and that a written report be submitted on all altercations. A further reduction was brought about by the installation of a closed circuit monitor in the Watch Commander's office and cameras in the processing areas.

A study was conducted by the Los Angeles Sheriff's Department in April, 1970, concerning the bar-arm, chan-

cery, and carotid controls. Their findings indicated that the holds inflict minimal pain, are humane methods compared to the baton, sap, etc., and are generally more acceptable to the public. They recommended retaining the holds, follow-up training, and supervisory review. A summary of th101 study is included in Addendum 6.

A summary of the California Highway Patrol's Personal Weapons and Physical Methods of Arrest Guide is included in Addendum 7. The guide does not address itself to the use of unconsciousness rendering control holds. The self-defense techniques described are a forearm blow to the head, knee to the groin, and extended knuckles to the throat.

This Committee concluded that these techniques are more likely to cause serious injury to the concerned citizen than the techniques employed by officers of the Los Angeles Police Department.

The use of plastic handcuffs or the adoption of leg-restraining devices is an effective means of disabling a violent person and minimizes injury to the citizen and arresting officer. Instruction in the use of these devices would further enhance an officer's ability to control an individual without resorting to an excessive amount of visible or objectionable force.

*CONCLUSION*

The use of unconsciousness rendering control holds, due to their ease of application, speed, and rapid effect on the human body, eliminates the necessity for the escalation of force, thereby minimizing the risk of further citizen involvement.

While the holds may cause injury to the subject to whom they are applied, they are nevertheless the most effective and most humane means of establishing physical control.

The risk of injury to either the subject or the officer is minimal if the holds are applied as taught at Training Di-

vision. The persons interviewed were unanimous in their opinion that there are no viable alternatives to these control holds. Elimination of the holds as Department-approved techniques would cause an escalation in the amount of force necessary to control a combative suspect, thus resulting in more frequent and more serious injuries to suspects and officers, and an increase in personnel complaints.

The various control holds are neither inherently good nor inherently bad—they are simply tools; the possibility for their misapplication lies with the level of expertise and professionalism of the individual officer.

/s/ Thomas P. McTighe
THOMAS P. MC TIGHE, Commander
Alternate Chairman
Unconsciousness Rendering Physical
Control Holds Committee

/s/ L. E. Ritter
LLEWELLIS E. RITTER, Commander
Member
Unconsciousness Rendering Physical
Control Holds Committee

/s/ John B. Demarest
JOHN B. DEMAREST, Commander
Alternate Member
Unconsciouness Rendering Physical
Control Holds Committee

1.1
September 25, 197([illegible])

TO: Commander Thomas P. McTighe
Commanding Officer, Internal Affairs Division

FROM: Edward M. Davis
Chief of Police

SUBJECT: AMENDMENT NO. 1 TO THE PRECEPT FOR THE AD HOC COMMITTEE ON UNCONSCIOUSNESS RENDERING PHYSICAL CONTROL HOLDS

1. You are hereby designated as alternate Chairman of this Committee and Commander John B. Demarest, Operations Central Bureau is assigned as an alternate member.
2. This amendment is effective immediately.

/s/ E. M. Davis
EDWARD M. DAVIS
Chief of Police

INTRADEPARTMENTAL CORRESPONDENCE

1.1

July 9, 1975

TO: Commander Sidney E. Mills
Office of Operations

FROM: Edward M. Davis
Chief of Police

SUBJECT: PRECEPT FOR AN AD HOC COMMITTEE AND POLICY REVIEW AUTHORITY ON UNCONSCIOUSNESS RENDERING PHYSICAL CONTROL HOLDS

1. A Department Ad Hoc Committee on Unconsciousness Rendering Physical Holds is hereby convened consisting of yourself as chairman and Commanders Thomas P. McTighe and Llewellis E. Ritter as members.

2. The Committee shall convene, as soon as practicable, at the direction of the chairman to study all unconsciousness rendering holds currently taught by the Training Division and authorized for field use. This study will include but shall not be limited to:

   (a) The present level at which unconsciousness rendering holds are approved for inclusion in the police training curricula.

   (b) The physiological impact of such holds on the human body.

   (c) Current attitudes and/or guidelines if any, governing their adoption and use in various police situations.

   (d) Available alternatives to the use of unconsciousness rendering holds, including their effectiveness, advantages and disadvantages.

3. The Committee shall submit a report on its study to include such findings and recommendations which will enable the formulation of policy recommendations by a review authority consisting of the Assistant Chiefs of Police. The Committee's report shall be submitted at the direction of the chairman of that body for transmittal to the convening authority.
4. A Policy Review Authority is hereby convened on this subject consisting of Assistant Chief Daryl F. Gates as chairman, and Assistant Chiefs Jack G. Collins and Louis L. Sporrer as members. This body shall act in the capacity of a reviewing officer for the Ad Hoc Committee and shall submit a report on recommended policy governing the adoption and use of unconsciousness rendering physical holds by the Department.
5. The Ad Hoc Committee and the Policy Review Authority shall be governed by the procedures contained in Special Order No. 20, 1975. The Commanding Officer, Personnal [*sic*] and Training Bureau shall provide staff and clerical support for the Committee and the Review Authority. The Policy Review Authority shall submit its report, including the report of the Ad Hoc Committee, to the convening authority no later than 120 days from the date of this precept.

/s/ E. M. Davis
EDWARD M. DAVIS
Chief of Police

EXHIBIT 7

April 17, 1970

TO: Edward M. Davis
Chief of Police

FROM: Captain E. M. Lembke
Commander, Venice Division

SUBJECT: *CONTROL HOLD STUDY*

Attached is a report submitted by the Control Hold Committee appointed to study the head and neck control holds currently being employed by this Department.

/s/ E. M. Lembke
E. M. LEMBKE, CAPTAIN
Commander, Venice Division

EML:mr

Att.

## *CONTROL HOLD STUDY*

On March 18, 1970, a Control Hold Committee composed of Captains P. J. Gillen, F. A. Phillips, and E. M. Lembke, was appointed by the Chief of Police to review the various control holds involving the head and neck currently being employed and taught by members of the Los Angeles Police Department. This report sets forth opinions of the committee and Dr. Robert D. Shlens, a specialist in orthopedic surgery, as to the effectiveness, difficulty of use, and danger to a suspect and the officer applying the various control holds.

Also included herein are the opinions of representatives of the Los Angeles Sheriff's Office, the California Highway Patrol, Camarillo State Hospital, Los Angeles County-USC Medical Center, and Mr. Takayuki Kabota, a self-defense expert, currently employed by the Department to evaluate the Department's physical training and self-defense techniques and to provide instruction in advanced techniques to Academy instructors.

The holds discussed are the Bar Arm Control, Bar Arm Control from the Front, Chancery, Carotid Control, Locked Carotid Control, the Front Head Lock Control, Head Lock Control, Roll Over and Twist Lock, and C-Clamp Holds on the nose and throat. These holds were demonstrated for the committee and Dr. Shlens by members of the Police Academy Physical Training staff and are described herein. Accompanying photographs effectively portray the position the officer takes in applying each hold, the use of his body, arms and hands, and also substantiate the value of the hold to the officer or the possible danger of physical trauma to the suspect.

### *Control Holds*

These techniques are described as a right-handed officer would perform the holds. If a left-handed officer were performing the holds, the procedure would be reversed.

1. *BAR ARM CONTROL* This hold is started from an advantage left or right position. In this instance, the officer is pictured at an advantage left position. The recruit officer is taught by a numbered series after assuming a stance to the right rear of the suspect (Photo 1A):

   The officer's right arm is placed firmly across the top of the suspect's chest, with the right fist firmly against the suspect's left shoulder (Photo 1B). At the same time, the officer's body is moved to the rear of the suspect with the left foot at a position behind the suspect's left foot.

   The officer's forearm is placed across the front of the suspect's neck, pulling the suspect back off balance until he is leaning backward with his weight on his heels (Photo 1C). The back of the suspect's head rests on the officer's right shoulder (Photo 1D). The officer also drops his right leg back, pulling the suspect farther off balance, his back resting across the front of the officer's chest.

   The officer's left leg is forward and bent to prevent the suspect from pulling out.

   The officer reaches up with his left hand and places his right fist in the left hand (Photo 1E). He places his head on the same side as his hands, pressing his head against the left side of the suspect's head (Photo 1F). The officer then applies pressure by drawing his forearm back across the suspect's throat (Photo 1G).

Comment:

The Academy staff teaches that the Carotid Control is to be used when the Bar Arm Control "is not com-

pletely effective." The *Committee is of the opinion that the Bar Arm Control should be used only as a means of gaining the initial control required to progress into the Carotid Control.* This would reduce the possibility of *injury to the trachea or larynx,* which *Dr. Shlens considers a definite hazard.** Dr. Shlens, too, recognizes the advantage gained by the officer in the use of the Bar Arm Control, which assists in lowering the suspect's body to a position where the Carotid Control may be effectively applied.

*Mr. Kabota believes that the Bar Arm Control, the Carotid Control, and the Front Head Lock are being taught in a manner which affords both good control of the suspect and protection for the officer.* He agrees that *pressure applied* to a suspect's throat *over an extended period of time is hazardous.**

2. *BAR ARM CONTROL FROM THE FRONT* This hold starts from an interrogation front position. There are two methods of applying the hold.

The Shoulder Spin (Photo 2A)

The officer takes a step forward with the left foot, placing his left hand in a position to block the suspect's right arm. At the same time, the right hand is placed solidly against the front of the suspect's left shoulder. The officer then pushes back on the suspect's left shoulder, moves the left hand up to the suspect's right arm and pulls forward on his arm, creating a spinning effect.

As the suspect is spun around, the officer moves to a position at the rear of the suspect. His right forearm is across the front of the suspect's neck. The officer then drops his right foot back, pulling the suspect back off balance in the same manner as in the

*[Printer's note: italicized material denotes underlining by hand.]

Bar Arm Control. The officer's right fist is grasped in his left hand. The stance is the same as in the bar arm position previously mentioned and pressure is applied in the same manner.

Front Punch (Photo 2B)

The officer takes a step forward with his left foot and at the same time throws his right hand in a straight "punch" fashion over the suspect's left shoulder past the left side of the suspect's neck, making slight contact with the neck (Photo 2C). While stepping in with his left foot, the officer blocks the suspect's left hand against any blows the suspect may throw.

The suspect's right elbow area is grasped with the left hand and pulled forward, spinning the suspect to the right. This causes the suspect to step into the officer's right forearm. The officer then steps behind the suspect at the time he is spun around. This puts the suspect in the proper position to apply the Bar Arm Control. The suspect is then pulled backward off balance, as described in the other forms of the Bar Arm Control. The left hand is then moved into position and the hold is applied in the same manner as previously described.

3. *CHANCERY* After the officer has applied the Bar Arm Control in one of the aforementioned methods, he may find that the suspect is too strong or that the hold is not working effectively. To compensate for this possibility, a control hold is used to meet the problem. *This hold is performed from a kneeling position after the Bar Arm Control is already applied.**

The officer releases his left hand from the position of holding his right fist. The right arm is kept in a position across the front of the suspect's throat.

*[Printer's note: italicized material denotes underlining by hand.]

The officer then moves his left arm forward, palm up, until the back of his arm (tricep muscle) is across the top of the suspect's left shoulder (Photo 3A).

With his right hand, the officer grasps the bicep portion of his left arm firmly. The officer then brings his left hand back to the rear of the suspect's head and places his left palm against the back of the suspect's head (Photo 3B).

The officer then has the suspect in a position to apply the Chancery. Pressure is applied by slowly pushing forward with the left hand against the back of the suspect's head and at the same time drawing back the right elbow so that pressure is applied across both the front and sides of the suspect's throat.

4. *CAROTID CONTROL* As in the Chancery hold, the Carotid Control is applied when the Bar Arm Control is not completely effective. (Note comment on Bar Arm Control.) *It is applied from a position where the officer already has a Bar Arm Control on the suspect and is kneeling.**

The officer releases the pressure and tension in his right arm momentarily. At the same time, he thrusts his arm quickly to his left forming a "V" with his elbow at the suspect's chin. His upper arm is against the right side of the suspect's neck and his forearm against the left side (Photo 4A).

The officer then quickly bends his right fist in a goose neck fashion toward the suspect's left shoulder (Photo 4B).

He places his left hand over his right fist in a palm-over-fist manner (Photo 4C).

*[Printer's note: italicized material denotes underlining by hand.]

Pressure is applied by flexing the right bicep and pushing against the right fist with the left hand toward the suspect's neck (Photo 4D).

This pressure has an effect against the carotid arteries on both sides of the neck, causing a diminishing of the blood supply to the brain. *If the hold is maintained for a substantial length of time, unconsciousness can result.**

Comment:

Dr. *Shlens suggests*, and *the Committee agrees, that training in the use of this hold should include a careful delineation of the symptoms that occur when the suspect "becomes limp" or develops unconsciousness.* (The Academy staff opines that a suspect may go limp but remain conscious.) *It is also agreed that the officer must receive explicit instruction as to the critical three-minute interval after which the brain can no longer tolerate the absence of oxygen. Dr. Shlens states that if this hold is maintained beyond the critical three-minute time limitation, that death or permanent brain damage will result if the blood has obstructed the air flow.* (*Though* the flow of blood during this period decreases due to the frontal pressure and therefore causes unconsciousness, the *brain continues to receive a limited supply of blood* from *vessels located at the rear of the neck.*)*

5. *LOCKED CAROTID* This hold also is applied from a kneeling position. It is used when the Carotid Control is not having the proper effect on the suspect or when the suspect has succeeded in tucking his chin under the officer's arm, nullifying the effect of the hold.

As in the Carotid Control, the officer quickly places his right arm in a "V" across the front of the suspect's neck. The elbow is under the suspect's chin, the biceps portion of the right arm is against the right side of the

*[Printer's note: italicized material denotes underlining by hand.]

suspect's neck and the left forearm portion is against the left side of the neck. The right hand is made into a fist and goose necked so that it is pointing toward the officer's left shoulder (Photo 5A).

The officer removes his left hand from his right fist (leaving the right hand in a fist and in a goose-necked position) and moves it quickly forward so the bottom of his left arm (tricep) is resting across the top of the suspect's left shoulder (Photo 5B).

He then places his right fist (which is kept goosenecked) in the area on the inside of his left elbow between the forearm and bicep.

He then brings his left hand back behind the suspect's head and places his left hand, palm down, on the rear of his right shoulder. The back of the suspect's head is resting across the front of the officer's left forearm. The suspect is now locked into position (Photo 5C).

Pressure is applied by moving the left hand back over the officer's right shoulder. This causes the suspect's head to bend forward and pressure is applied against the carotid arteries on both sides of the neck.

6. *FRONT HEADLOCK CONTROL* This hold is intended to be applied from a position directly in front of the suspect. The officer is taught to use this hold from an interrogation front position, and when the officer is unable to approach the suspect from the rear or side.

The officer takes a short step forward with his left foot to get close to the suspect.

At the same time, he quickly reaches out with his left hand hooking it around to the back of the suspect's head, and firmly placing the palm at the back of the suspect's neck (Photo 6A).

The suspect's head is pulled forward so that he is forced to lean forward at the waist. Effort is made to keep him leaning forward as long as possible.

The officer then hooks his right arm around the front of the suspect's neck and places the suspect's head under his right armpit so that it cannot be pulled up or away (Photo 6B).

The left hand is removed from the back of the suspect's neck and placed firmly against the front portion (deltoid) of the suspect's right shoulder, pushing the right shoulder back (Photo 6C).

The officer's right hand then grasps his left wrist. This causes the top of the right forearm to make contact across the front of the suspect's neck (Photo 6C).

The left foot remains stationary and the right leg is moved straight back causing the suspect to lean further forward (Photo 6D).

The suspect is then moved to the left and right by rotating the shoulder so the suspect does not regain his balance.

Pressure is applied by rotating the right forearm up across the front of the suspect's throat (Photo 6E). The officer can then take the suspect forward down onto his stomach and cuff him.

A variation of the Front Headlock Control is used in the event the suspect is very large or excessively combative. The officer merely slaps the suspect's midsection with the back of his right hand, causing the suspect to be distracted while the officer reaches around with his left hand to the back of the suspect's neck. Another method of diverting the suspect's attention is to step in toward the suspect, driving the palm of the right hand into his midsection, causing him to bend forward (Photo

6A). The officer then follows through with the same procedure as in the Front Headlock.

Comment:

Dr. Shlens advises that in using the variation of the Front Headlock Control, the *officer should be instructed that the lower rib cage should be avoided when striking the midsection with the butt or back of the hand* to distract the suspect. He points up the fact that a *rupture of the spleen may occur as the result of a simple displaced rib fracture caused by very minor blunt trauma.*

The *Committee is of the opinion that the distracting blow should remain a part of the instruction despite the minimal possibility of the suspect's rib being fractured.** Distraction is capable of playing an important role in the success of this and other holds and, of course, the officer in such a situation must judge to what extent he goes in the execution of the tactics he has learned. He cannot, for example, concern himself with the possibilty of injury to an assailant when he is fighting for his life.

Mr. Kabota supports the use of the Front Head Lock against an opponent whose position prevents approach from the side or rear.

7. *ROLL OVER AND TWIST LOCK* Once the officer becomes aware that the Carotid Control hold has caused the suspect to go limp, he can roll the suspect over and handcuff him with relative ease.

With his right arm continuing to maintain pressure on the suspect's neck, the officer grasps the suspect's left wrist (Photo 7A), though he may also pull the suspect's right arm back and roll him to the right.

The officer then rolls the suspect over until he is lying face down (Photo 7B) and pulls the suspect's

*[Printer's note: italicized material denotes underlining by hand.]

left arm up toward is head while holding the suspect flat with his right hand (Photo 7C).

By then placing both knees on the suspect's back, the officer's hands are free to apply a twistlock (Photo 7D) and handcuff the suspect.

If the suspect refuses to bring his right wrist back for cuffing, the officer may then rotate to a position over the suspect's head and by applying pressure to the suspect's left arm, the suspect will be encouraged to raise his right arm (Photo 7E).

8. *C-CLAMP HOLD (NOSE)* This hold, which will gain compliance of a suspect by the pressure applied, is completed by controlling the suspect from the rear with the left hand while applying pressure with the right hand at the nose and the neck under the jawbone (Photos 8A, B).

   Comment:

   *It is the consensus of the Committee that the usefulness of this and the neck C-Clamp Hold is limited.* When it becomes necessary to control a moving suspect, the chance of properly applying the hold is remote and the ability to maintain control is questionable. *Dr. Shlens expressed concern* for the placement of the finger at the bridge of the nose and the possibility of blunt trauma to the eye if the hold is not carefully applied. It is reasonable to assume that *"careful application" would ordinarily be impossible.**

9. *C-CLAM HOLD (NECK)* Photo 9A portrays a hold performed with one hand which, when applied to the neck, will often gain the cooperation of the suspect. Photo 9B depicts a hold which is no longer taught at the Academy, due to the possibility of injury to the larynx.

*[Printer's note: italicized material denotes underlining by hand.]

Comment:

Dr. Shlens believes that this hold would be safer if applied high in the neck at the base of the tongue, rather than overlying the larynx. The committee concurs. Again, the ability to apply the hold and maintain it is questionable. The officer requires a control hold which affords him an *advantage** over the suspect; this hold does not accomplish that.

## Utilization of Holds By Other Agencies

Other law enforcement agencies and mental institutions also find the need for providing a means of controlling a violent suspect or patient, but vary in their practices.

### *CALIFORNIA HIGHWAY PATROL*

The California Highway Patrol formerly employed the use of the Carotid Artery Choke, utilizing the method formerly taught by this Department which requires that the suspect's body be bent diagonally across the officer's back. This hold has disadvantages, e.g., the placing of the suspect *behind the officer. On March 6, 1970, the Patrol was ordered to refrain from employing the use of any hold which might be classified as a "sleeper hold."**

It is interesting to note that the Patrol was advised by Dr. Irma West, State Bureau of Occupational Health, *that if immediate and temporary disability of a male assailant is the objective, a blow to the testes offers the best possibility,** with a blow to the solar plexus as the second choice, followed by a blow to the head or back of the neck.

### *LOS ANGELES SHERIFF'S OFFICE*

The officers of the Los Angeles Sheriff's Office *are not taught the use of the Bar Arm Control.** It is their opinion that the inherent danger in this hold is reduced by the utilization of the Carotid Control hold. *The officers are taught*

*[Printer's note: italicized material denotes underlining by hand.]

*to apply this hold high on the neck under the jaw. The Chancery is also taught.** The training sergeant interviewed states that to his knowledge no injuries to cadets have been sustained in the use of these holds.

*PSYCHIATRIC UNIT, LOS ANGELES COUNTY-USC MEDICAL CENTER*

Control holds invovling the head and neck are not recommended for violent mental patients. Attendants are taught restraining holds using leverage control of the arms. They also are taught a hold in which the sharp edge of the attendant's arm is placed across the bridge of the patient's nose and a backward pressure then exerted. They concede that their problems differ from those of an officer in the field. If great force is needed, they overpower the patient by sheer numbers and apply restraining straps.

*CAMARILLO STATE MENTAL HOSPITAL*

Control holds are not permitted at this institution; violent resistance is overcome by a sufficient number of attendants. They do not use handcuffs, restraining straps, belts, or strait jackets. They rely on the injection of medication, e.g., sodium pentothal, while the patient is restrained by as many attendants as are necessary.

*Conclusions*

With each succeeding year, it has become increasingly apparent that a police officer must be thoroughly trained in the art of self defense; today he is more likely to be confronted with a situation which necessitates the subduing of a suspect or requires the use of a control hold. Without the control afforded by the use of these holds and their effective application by officers who are thoroughly trained and familiar with their use, it would be reasonable to assume that more injuries would be sustained by officers of this De-

*[Printer's note: italicized material denotes underlining by hand.]

partment. A survey conducted by the Department in January, 1970, revealed that approximately 20% of the officers injured in altercations from July, 1968 through June, 1969, received at least temporarily disabling injury:

| | TOTAL OFFICERS | TOTAL OFFICERS IOD | TOTAL OFFICERS IOD WITH NO DAYS OFF | TOTAL DAYS OFF |
|---|---|---|---|---|
| July-December 1968 | 508 | 90 | 418 | 652 |
| January-June 1969 | 514 | 104 | 372 | 476 |
| TOTAL | 1022 | 194 | 790 | 1128 |

*Recruit officers at the Academy receive approximately 35 hours of instruction and practice in the use of these holds. Despite the fact that they are generally required to apply the holds with the same degree of severity as would be applied in a field situation, only two of 334 recruits in five classes surveyed received injuries resulting from the application of these control holds. Both officers sustained a contusion of the throat, without prolonged or permanent damage.**

None of the holds are difficult to apply under ordinary circumstances; however, the application of the Carotid Control by a small officer on a large suspect could be disastrous, as was probably the case in the incident depicted in the accompanying news photograph. Accordingly, the initial employment of the Bar Arm Control, followed by the Carotid Control, could prevent such an embarassing or perhaps dangerous result.

*A demonstration of the Al Thomas methods of self defense was observed by a member of the Committee at the Academy and, although some of his tactics are presently being taught, others appeared worthy of further consideration. Further study should be conducted into the use of a rapid resuscitation method which was demonstrated subsequent to one*

*[Printer's note: italicized material denotes underlining by hand.]

*of the demonstrators intentionally being rendered unconscious by the Carotid Control Hold. In the interests of the suspect's well being and to preclude the possibility of undue criticism, immediate return of the suspect to a conscious state is desirable.**

There are no statistics available as to injuries incurred by suspects upon which these holds were employed; however, this committee is cognizant of the fact that there is an inherent danger in the use of several of the holds commensurate with a number of factors, for example, the strength of the officer, the physical condition and strength of the suspect, proper application, and the length of time the hold is applied. However, it must be recognized that the possibility of injury to the suspect in the use of the hold must be weighed against the possibility of injury sustained by the officer in a struggle in which the officer is unable to maintain or gain control of the suspect. Moreover, it is not improbable that the suspect also could sustain injury resulting from the officer's ultimate reliance upon the use of a sap, baton, or service weapon, when the officer ascertains that he is unable to subdue the suspect in another manner. There is also the consideration that if a violent suspect is not immediately controlled, handcuffed, and removed from the scene of the arrest, that the prolonged struggle could conceivably attract onlookers who would go to the assistance of the suspect or perhaps cause a minor incident to progress into a full-blown riot.

These holds not only permit rapid and effective control of an otherwise violent or unmanageable suspect, they are also more acceptable to the bystanders than the application of a sap to the side of the suspect's head or even the jab of a baton into the suspect's ribs (*which, in itself, presents the possibility of injury to internal organs, such as the liver or spleen). Therefore, it is the conclusion of this Committee*

*[Printer's note: italicized material denotes underlining by hand.]

*that all the holds described herein should continue to be utilized in the field and taught at the Academy with some modification as described.** It is also suggested that periodic retraining in the use of the holds be conducted at Patrol and Traffic roll calls. The members of this Committee believe that occasionally the Bar Arm Control or the Carotid Control are use [sic] in situations which do not require their use, that occasionally officers are motivated for various reasons to unnecessarily use one of these holds. Proper first-line supervision and discussion regarding this would encourage more forethought prior to their use.

*[Printer's note: italicized material denotes underlining by hand.]

DECLARATION OF PASCAL KENNETH DIONNE IN SUPPORT OF MOTION TO ADMIT STATISTIAL [*sic*] SUMMARIES PERTAINING TO THE USE OF CONTROL HOLDS.

United States District Court, Central District of California.

(Title Omitted in Printing).

Case No. 77-0420-RMT.

I, PASCAL K. DIONNE, declare and state as follows:

1. I am a Sergeant II in the Los Angeles Police Department. Presently I am assigned as Officer in charge of the Physical Training Unit located at the Physical Training Division.

2. As Officer in charge I am responsible for the administration, management and instruction of police recruits physical fitness curriculum. I am also responsible for the in-service centralized self defense training and all in-service schools which deal with self defense and physical fitness training. Additionally I am one of the Department Representatives and experts in areas relative to the use of force and instruction of the use of force.

3. My duties include the statistical recordation and review of all altercation reports. Altercation reports are prepared whenever an officer makes an arrest. If, in making the arrest, the officer is involved in an altercation a notation of the incident is made in the margin [P.K.D.] of the arrest report. These reports are then sent to the Training Division for tactical review. Statistics pertaining to the suspects size, the type of arrest made, the area in which the arrest was made and the type of restraining tactic applied are then compiled. These statistices enable the Department to determine what is the prevalent [P.K.D.] hold being used; which restraining tactics officers feel confident in applying;

the situations in which officers use a particular tactic; and to determine the overall effectiveness of the restraining tactics in use in order to meet the Department needs.

4. If called as a witness, I would competently and truly testify as set forth in this declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed the 26th day of November, 1980 at Los Angeles, California.

/s/ Pascal K. Dionne
PASCAL K. DIONNE

**Excerpts From the Deposition of Pascal Kenneth Dionne. September 19, 1980 (Exhibit 68).**

* * *

(Page 20, lines 27-28; page 21, lines 1-28; page 22, lines 1-19):

Q. What is an altercation report?

A. An altercation report is an arrest report or a crime report wherein an officer in his attempts to arrest or control an arrestee becomes involved in an altercation, a physical altercation. The procedure is to note that on the report with the word "altercation" and copies of those reports are to be sent to the Academy.

Q. When was that program instituted?

A. I don't know.

Q. Was it in effect when you came to the Academy?

A. Yes, it was.

Q. As an instructor?

A. Yes.

Q. I've seen those altercations written in arrest reports for 10 years.

A. I know it's been for quite a while, but I don't know specifically how long.

Q. I don't believe, and I'm not testifying — this is not testimony — that the Academy as a matter of routine received copies of all those reports.

MR. UNGER: Is that a question?

MR. MITCHELL: I will get to it.

BY MR. MITCHELL:

Q. To see if you know whether the policy is one that's gone back for 10 years or whether you believe it to be one that was initiated within the last two or three years or can you say?

MR. UNGER: Objection. Speculation. He can only testify as to what he has seen and what he knows from his own personal observation.

MR. MITCHELL: I can get hearsay from him. If I can't establish a foundation, it doesn't come in.

THE WITNESS: I think it's been in effect longer than three years, and from hearsay I believe it came into effect — and I'm not sure of the exact title — but I believe it to be the tactics committee to evaluate tactics of police officers in the field, and the purpose of altercation reports is to review the tactics involved and make recommendations.

BY MR. MITCHELL:

Q. Is it anywhere commemorated in writing under what circumstances an officer must write "altercation" on the arrest report?

A. No.

Q. Is it anywhere commemorated in writing that reports that bear the word "altercation," copies of those will be transmitted to the Academy?

A. I believe that is in the Department Manual as part of what we call Volume 5 which includes report procedures. I believe that's in there.

* * *

(Page 76, lines 4-28; page 77, lines 1-27):

Q: Referring to Page 11 of your declaration, you indicate that in the training mode demonstration approximately two hours is spent during the 24-week period demonstrating the use of the bar-arm control; is that correct?

Yes.

Q: And approximately one hour is spent demonstrating the use of modified carotid control?

A: Yes.

Q: With 15 hours devoted to demonstrating the use of the baton; is that correct?

A: Yes.

Q: You have indicated to me that to your knowledge you are not aware of any death that has resulted from the use of a baton; is that correct?

A: That's correct.

Q: And you are aware of at least two deaths that have resulted from the use of a control hold?

MR. UNGER: Objection. That is not what he stated before. He indicated that he is aware of two deaths that may have resulted after the application of a control hold, not necessarily caused by a control hold.

BY MR. MITCHELL:

Q: Shortly after a control hold was applied?

A: Yes:

Q: I count 12 hours total demonstration with the modified carotid, sit down, the locked carotid and the chancery and the bar-arm control and the carotid. Is there any correlation between the relative danger in the use of a control hold or an instrument such as the baton and the amount of hours spent in demonstrating the use of the hold or the instrument?

A: No.

Q: It has to do with proficiency rather than danger?

A: Well, it has to do with the time that is needed to adequately present the initial class on that particular subject. These hours indicate the primary and initial demonstration and instruction of those techniques.

There are additional hours that are devoted in a practical capacity to all these techniques. An example would be when the initial — when the class initially goes out on the field for their physical training session, they go through stretching

techniques, and they have received preliminary training with the baton. They do about two or three minutes practical exercise with their baton to assist them in developing their proficiency. That time is not indicated in these approximate hours.

There is no way to determine how much time. That is relevant to the ability of that particular class and the needs of that particular class. These hours are approximate because they are guidelines as to how long it generally takes to conduct that class in that subject:

* * *

(Page 90, lines 4-28, Page 91, lines 1-7):

BY MR. MITCHELL:

Q: Why do you think you are unable to train your officers in order to stop deaths from the use of the control holds?

A: If I may use an example: If an individual dies as a result of the carotid control hold or dies as a result of an officer attempting to apply a carotid control hold, there is no way to control through training or any method the state of mind of that officer in terms of what he felt the dangers were to him at that point in time. If he has the ability to maintain complete control and applies the control hold properly in all applications and is effective in his technique and, in short, it works, I am convinced that it is the safest technique and the possibility for injury is as minimal as it can possibly be.

In a hostile situation, and anyone that has been in a hostile situation will tell you that any one uncontrolled factor can come into that when you talk about a person panicking and fighting for their life and merely because the officer was successful in subduing that suspect, even if it resulted in the death of that suspect, that does not mean that officer

was, in fact, on top of the fight throughout the whole scuffle. That does not mean that his life was not in immediate jeopardy many times, so there is no way I feel that these types of situations can be controlled.

When you have — and I have seen this in training — an officer or a recruit attempt to effect a control hold, they are very greatly impaired by the actions of a hostile, combative suspect, so although we teach the textbook application, and if the textbook application is applied properly, we feel confident that it is as safe a technique as we have been able to come up with.

* * *

## Affidavit of Eichi Karl Koiwai, M.D. September 15, 1980 (Exhibit 51).

Affidavit of Eichi Karl Koiwai in Opposition to the Issuance of a Permanent Injunction or a Declaration That the Bar-Arm or Carotid Control Holds Are an Unconstitutional Application of Force.

United States District Court, Central District of California.

(Title omitted in printing).

No. CV 77-0420-RMT.

I, EICHI K. KOIWAI, being duly sworn hereby state:

1. My name is Eichi K. Koiwai. My business address is the Hahnemann Medical College and Hospital of Philadelphia, two-thirty North Broad Street, Philadelphia, Pennslyvania, [*sic*] 19102. I recite the following facts upon either my personal knowledge or facts that relate to my medical or self-defense opinion noted below.

2. I am a medical doctor duly licensed to practice medicine in the State of Pennslyvania. [sic] I am an associate professor of pathology at the Hahnemann Medical College an [*sic*] am the Director of Divisions of Medical Pathology and cardiovascular pathology at the Hahnemann Medical College. I am also a sixth degree black belt expert in Judo. A complete biographical sketch is attached hereto, marked Exhibit A, and incorporated herein by reference.

3. I have read and considered the Los Angeles Police Department Training Bulletin, Volume 10, issue 13, May, 1978 (attached hereto as Exhibit B.) Based on my medical experience and knowledge as well as my judo experience and knowledge I have the following opinions relevant to the control holds noted in this bulletin.

4. In the Training Bulletin, Volume 10, Issue 13, May, 1978 the control hold part II, photos 4-20 demonstrate techniques in choking which are in the sport of judo, classified as HADAKA JIME (Naked Choke). There are basically 2 methods: 1) "hand clasped" as shown in photo numbers 4-10 and 14-18. 2) "one hand placed behind the suspect's head" as shown in photo numbers 11-13 and 19-20, which has been designated in the Bulletin as locked bar arm control.

In Judo the "Hadaka Jime" is applied with pressure either on the "windpipe" (larynx and upper part of trachea) or on the so called "carotid triangle." Pressure on the windpipe causes pain and the uke (the person on whom the technique is applied) submits. The pressure applied correctly on the anterior cervical triangle or "carotid triangle" will cause unconsciousness.

The anterior cervical triangle is called "carotid triangle" in teaching "shime waza" (choking holds) in Judo for the sake of simplicity. Actually, the anterior cervical triangle is a triangle bordered by the sternocleidomastoid muscle (large neck strap muscle) laterally, the mandible (jaw bone) above and midline medially from the tip of the jaw to the sternal notch. Within the anterior cervical triangle, there are smaller tiangles [*sic*] (see Exhibit C attached, which is a copy from Morris' *Human Anatomy* text).

1. the submaxillary (submandibular) or digastric
2. the superior carotid triangle
3. the inferior carotid triangle

In choking, the most important triangle is the superior carotid triangle which contains important structures such as the carotid arteries, carotid bodies, internal jugular vein, the vagus nerve and cervical sympathetic trunk.

There are two "carotid triangles", one on each side of the neck.

If the pressure is properly applied on the carotid triangle by a small person, i.e., a female against a large man with a large muscular neck, it is effective because the triangle is covered and protected only by a paper thin muscle known as platysmas muscle. This muscle extends obliquely from the chin, the corner of the mouth, and the lower part of the cheek across the mandible and the neck to the upper part of the thorax and shoulder. The common carotid artery, in addition, is covered and protected only by skin, superficial and deep fascia. These structures, however, are insufficient to protect the above structures from pressure applied by choking techniques.

Therefore, "effective choking" is the amount of pressure applied on the "carotid triangle" which affect the vital structures and causes unconsciousness. Unconsciousness is not caused by pressure on the neck muscles, larynx or trachea. The two methods of Hadaka Jime are not effective to cause unconsciousness unless there is sufficient pressure applied to the one or two carotid triangles. Excessive pressure on other neck structures and not on the carotid triangle invites injuries such as fractures of the larynx, hyoid bone, injuries to the vagus, recurrent laryngeal nerves, the internal jugular vein, etc. In most cases, the two methods of Hadaka Jime used on the uke or a suspect would not cause unconsciousness! The recipient will submit only because of the excruciating pain to the neck.

There are other methods of choking either from behind or in front of the uke in which the main pressure is on the "carotid triangle" which causes unconsciousness.

5. Almost all Judo players have had the experience of being "choked out." If properly done, there is no pain and

it feels as if one is going to sleep. It is not unusual for a contestant after being "choked out" and after regaining consciousness to want to continue fighting again. In Judo, the contestant loses the match if he/she submits to choking or becomes unconsious.

The physiological studies in "choking" in Judo have been extensively studied by the Society for Scientific Research of Judo, Kodokan, Japan, consisting of investigators from Tokyo University. Tokyo University of Education, Tokyo Jikei-Kai Medical School, Nihon Medical School, Ochanomizu, University of Tokyo.

The main objectives in their studies were:

1) the differences in the effect of the various methods of choking, i.e., Okuri eri Jime-far collar choke from behind, Katajuji Jime-half cross lock from the front and Hadaka Jime,
2) the duration of the effect of choking on the body,
3) the physiological mechanism of the resulting stage of unconsciousness,
4) arterial blood pressure,
5) finger and forearm plethysmogram,
6) skin temperature.
7) respiratory movement
8) pupillary reflex
9) reaction of urine
10) cramp or convulsions

Some of the conclusions made based on their experiments can be found in the enclosed article "How Safe is Choking (shime waza) in Judo?" published in the 1970 Official AAU-USJF Judo Handbook, 5th Edition. (A copy of which is attached as Exhibit D).

6. In Judo, there have been no reported cases of fatalities resulting from shime waza which would include "Hadaka

Jime." I have made a statistical survey of reports from IJF member countries. To date, I have collected 18 deaths, none of which resulted from choking directly, (See the attached copy of "Fatalities Reported in Judo" (18) which is Exhibit E). The one case of neck injury was not caused by choking.

The Director of Statistics, IJF, Ramon C. Barquin, kept statistical records of different techniques used in Judo at the world class level. These statistics were based on the World Judo Championship in Mexico, 1969; Ludwigshahen, 1971; Lausanne, 1973; Vienna, 1975, Olympics in Munich, 1972, and the 1974 World Junior Championships in Rio de Janeiro. There was an overall participation of 1286 Judokas from 66 nations who fought in 1525 combats. The frequency of use of technics [sic] which scored by Nage-waza (standing techniques) was 826; by Ne-waza (ground work). There were 52 choking techniques used or 13.5% of newaza techniques.

Of the 52 choking technics [*sic*], 7 were Hadaka Jime. No serious injuries or fatalities were reported by the use of choking techniques.

In Judo, the use of shimi waza is allowed from the age of 13 years and above, both male and female.

For promotions to higher rank, the students must show their proficiency in choking techniques. One of the methods of winning a match is by the use of choking techniques, therefore, it is used frequently, especially in newaza (ground work).

7. I have no statistics in the use of baton or night sticks. There have been three fatalities reported in Karate due to anterior chest trauma either by fist or kicks.

8. If the control holds, as demonstrated in the training bulletin, are applied properly and precautions are taken as directed in the manual, there would be a minimum of serious

injury. However, proper training in its use, taught by qualified instructors is a necessity. Experience has shown that in order to use choking as an effective method of control by either submission or by causing unconsciousness, the control of the body by the adversary is most important. The fear of being choked causes violent reaction and to choke without proper control of the adversary's entire body is difficult to do.

As indicated previously, if properly done, as a rule, very little pressure is needed. However, an over zealous maneuver with excessive pressure on the neck structures not on the "carotid triangle" can cause damage to the vital structures. As indicated by the manual "when the suspect stops resisting and goes limp, the officer must stop applying pressure." and "do not apply continuous pressure for more than 3 minutes" (it takes approximately 10 seconds, 8-14 seconds) are important reminders. The danger of choking (shimi wazi) is to continue to choke the person when he is still unconscious. Therefore, it is important to release the pressure immediately after the suspect become limp and unconscious. Normally, in Judo, the contestant regains consciousness naturally and spontaneously without difficulty in 10-20 seconds. However, the officers should be trained to immediately apply proper artificial respiration to revive

the suspect. If these precautions are used, the methods as prescribed in the training bulletin can be used as indicated.

Dated:

/s/ E. K. Koiwai, M.D.
E. K. KOIWAI, M.D.

Subscribed and swore to before me this 15 day of September, 1980, at Philadelphia, Pennsylvania.

/s/ Howard Schurr
NOTARY PUBLIC
State of Pennsylvania

Exhibit "A"

PROFESSIONAL BIOGRAPHICAL SKETCH — 1979-80

KOIWAI, EICHI KARL, M.D.

*Date of Birth:* February 21, 1920 *Place:* Seattle, Washington U. S. A.

*Education:*

Garfield High School, Seattle, Washington, graduated 1937 University of Washington, Seattle, Washington, graduated 1941, B.S. Hahnemann Medical College, Philadelphia, Pa., graduated 1947, M. D. Internship, Hahnemann Hospital, Philadelphia, Pa., completed 1948 Residency, Hahnemann Hospital, Philadelphia, Pa., Pathology completed 1951.

*Military Service:*

U.S.A.F. 1st Lt. to Capt., Chief of Laboratory Service, March AFB Calif. 1951-53. Aviation Medical Examiner, School of Aviation Medicine, Randolph AFB, Texas, 1952.

*Teaching Associations:*

Laboratory Assistant in Anatomy, University of Washington, 1941-1942. Teaching Fellow in Pathology, Hahnemann Medical College 1949-1951. Assistant Professor in Pathology, Hahnemann Medical College 1953-1956 Associate Professor in Pathology, Hahnemann Medical College 1956-present. Director of Divisions of Medical Pathology and Cardiovascular Pathology 1972-present.

*Hospital Appointments:*

Pathologist, Doctor's Hospital, Philadelphia, Pa. 1953-1954; 1965-1974.

Junior Attending Physician, Hahnemann Hospital, Philadelphia, Pa. 1953-1956.

Senior Attending Physician, Hahnemann Hospital, Phila., Pa 1956-present

Attending Pathologist, V. A. Hospital, Phila., Pa. 1954-1964.

American Board of Pathology: Anatomical Pathology October, 1952; Clinical Pathology December, 1954

*Membership Societies:*

Diplomate, National Board of Medical Examiners 1947, Alpha Omega Alpha. Honor Medical Society, AMA, Phila. County Medical Society, Penna. State Medical Society, American College of Pathology, American Society of Clinical Pathologists, Phila. Pathological Society, Penn State Society of Clinical Pathologists, International Academy of Pathology, American College of Sports Medicine, AAU Sports Medicine Committee.

*Publications and Papers Presented*

1. Subacute Bacterial Endocarditis Following Cardiac Surgery, E.K. Koiwai, M.D., H.C. Hahas, M.D., AMA Archives of Surgery, August 1956, Vol. 73, pp. 272-278.
2. The Analysis of Cause of Death After Cardiac Surgery for Acquired Heart Disease, E.K. Koiwai, M.D., G.I. Lauro, M.D., American Journal of Clinical Pathology, Vol. 29, No. 2, pp. 150-159, 1958.
3. P.J. Grotzinger, M.D., E.K. Koiwai, M.D., M.N. Croll, M.D., Clinico-Pathological Conference — Hahnemann Hospital Resident Physician.
4. "Experimental Bacterial Pancarditis" E.K. Koiwai, M.D., Vol. 4, No. 4, April 1958, pp. 91-95. Presented to the Annual Meeting of the Pennsylvania Association of Clinical Pathologists at Galen Hall, PA., May 13, 1961.

5. Inflammatory States Due to Bacterial Infection having a Histo-Pathological Resemblance to the Dyscollagenosis, E.K. Koiwai, M.D. Inflammation and Disease of Connective Tissue, W.B. Saunders Co. 1961, pp. 58-66.
6. The Pathologic Response of the Myocardium to Impaired Coronary Blood Flow. J.E. Imbriglia, M.D., D.Sc., E.K. Koiwai, M.D., and G. Blanco, M.D., Coronary Heart Disease, Grune and Stratton Inc. 1963, pp. 133-139.
7. Recurrent Peptic Ulceration and Gastric Hypersecretion Associated with Islet-Cell Hyperplasia of the Pancreas, L.R. DeJode, M.D., M.M. Howard, M.D., S. Yamulla, M.D., and E.K. Koiwai, M.D., The British Journal of Surgery, Vol. 1, No. 226, pp. 790-792, Sept. 1963.
8. The Study of the Incised Commissure in Mitral Stenosis, E.K. Koiwai, M.D., D.M. Sokol, M.D., and C.M. Mirikitani, M.D. Journal of Thoracic and Cardiovascular Surgery, Vol. 47, No. 2 pp. 205-216, Feb. 1964.
9. Venous Thrombosis in Normal and Cardiac Patients, E.K. Koiwai, M.D. Presented at the American Heart Association Council on Clinical Cardiology, Symposium on Thromboembolism, Phila., PA., Nov. 9, 1964.
10. Principal Accidents and Injuries in Judo (A survey in United States), E.K. Koiwai, M.D. International Symposium of Sports Medicine, Rio de Janiero, Brazil, pp. 19-23, October 1965.
11. Major Accidents and Injuries in Judo, E. K. Koiwai, M.D., Arizona Medicine, pp. 957-962, December 1965.

12. The Preventing of Injuries in Judo: A Medical Report, E. K. Koiwai, M.D., AAU-JBBF Official Judo Handbook, 3rd Edition pp. 247-251, 1966.

13. Women in Judo, A Medical Standpoint, E. K. Koiwai, M.D., AAU-JBBF Official Judo Handbook, 3rd Edition, p. 284, 1966.

14. Sports Judo, Its Medical Aspects, E. K. Koiwai, M.D. A.M.A. Proceedings of the ninth National Conference on the Medical Aspects of Sports. Houston, Texas, November 26, 1967.

15. The prevention of Injuries in Judo, E. K. Koiwai, M.D. Textbook Project: Sports Safety—Accident prevention and Injury control in physical education, athletics, and recreation. Published by AAHPER Division of Safety Education and Public Health Service and the U. S. Department of Health, Education and Welfare. pp. 149-1952; 1968

16. "How Safe is Choking (Shime-Waza) in Judo?", E. K. Koiwai, M.D. AAU-USJF Official Judo Handbook, 4th Edition, pp. 328-330, 1968.

17. "The Nutritional Requirements for Judo Tournaments," Michael Persoff, M.D. and E. K. Koiwai, M.D., AAU-USJF Official Judo Handbook, 4th Edition, pp. 331-339, 1968.

18. El Judo y la Medicina, E. K. Koiwai, M.D. El Medico, M. June 1968 pp. 8-10.

19. "Sports Judo, Its Injuries and Prevention," E. K. Koiwai, M.D. presented at the Germantown Academy Symposium on Sports Medicine, August 8-9, 1968, Fort Washington, Pa.

20. "Anatomical Changes at the Site of Cardiac Valvular Prosthesis in Humans. A Post-mortem Study." A. Nedwich, M.D.; E.K. Koiwai, M.D. P. S. Bolinger,

B. A.; R. L. Bishop, B.S. Presented at the American Society of Clinical Pathologists Meeting, Sept. 17, 1970 Atlanta, Georgia.

21. "The Athelete [*sic*] and Drugs", E.K. Koiwai, M.D. Presented at the Pan American Symposium of Sports Medicine in Conjunction with the 1970 VII Pan American Judo Championships, October 21, 1970, Londrina, Brazil. Published AAU-USJF official Judo Handbook 5th Edition pp. 317-319, 1970.
22. "Medical Problems in Judo" E. K. Koiwai, ..., Presented at the AAU Sports Medicine Forum, November 30, 1970, San Francisco, California.
23. "Early and Late Pathological Alterations Due to Prosthetic Valves; Clinical Correlation," Kemalettin Buyukozturk, A. Nedwich, B. Segal, E. K. Koiwai, P. Bolinger, R.L. Bishop, Abstracts of the 43rd Scientific Sessions. American Heart Association, Atlantic City, New Jersey, November 12-15, 1970.
24. "Judo Injuries in the Junior Division (ages 9-16 years)", Presented to the IJF Symposium of Sports Medicine in conjunction with the 1973 World Judo Championships in Lausanne, Switzerland, June 19, 1973.
25. "Injuries Commonly Occurring in the Sport of Judo" presented by invitation to the Annual Convention of the Academia Medica Del Sur, December 5, 1974. Ponce, Puerto Rico.
26. "What You Can Expect From the Sport of Judo" presented by invitation to the 1975 Spring Sports Symposium at the United Hospital Orthopedic Center, April 2, 1975, Newark, New Jersey.
27. "Medical Report" E. K. Koiwai, M.D., 1975 Official USJF Judo Handbook, 1st edition pp. 126-127, 1975.

28. "Fatalities in Judo" E. K. Koiwai, M.D., presented to the IJF Symposium of Sports Medicine in conjunction with the 1975 World Judo Championships in Vienna, Austria, October 20, 1975.
29. Koiwai, E.K. "Judo" Safety in Individual and Dual sports — Sports Safety Series — Monograph #4 AAHPER Publications, 1977 Chap. 11, pp. 37-42.
30. "Fatalities in Judo, Update" E. K. Koiwai, M.D. presented to the IJF Symposium of Sports Medicine in conjunction with the 1979 World Judo Championships in Paris, France, Dec., 2, 1979.
31. "Major Injuries Among Women in Judo" E. K. Koiwai, M.D. presented to the IJF Symposium of Sports Medicine in conjunction with the 1979 World Judo Championships, Paris, France, Dec., 2, 1979
32. "Fatalities Associated with Judo" E. K. Koiwai, M.D. accepted for publication "The Physician and Sports Medicine", April 1980 issue.

*SCIENTIFIC EXHIBITS*

Exhibits on "The Study of Mitral Commissurotomy" displayed at the Annual AMA Convention, Atlantic City, New Jersey, June 1966.

The same exhibit at the American Society of Clinical Pathology (ASCP) and the College of American Pathology (CAP) Annual Meeting in Cicago, [*sic*] Illinois, September 1969.

E.K. Koiwai, M.D.
Associate Professor of Pathology
Director of Division of Medical Pathology and
Cardiovascular Pathology

*Specialty:*

I. Cardiovascular Diseases
Research

1. Effect of prosthesis at the site of valvular replacement in rheumatic valvulitis and calcific aortic stenosis.
2. Causes of death in patients with cardiac valvular prosthesis.
3. Anatomical changes of vein jump grafts for coronary artery disease.
4. Anatomical changes at the junctions of aorta and iliac vessels and aortic prosthesis replacement of abdominal aortic aneurysm.
5. The pathogenesis of viral encephalitis in relation to experimental viremia (Laurie Ann Rogers Memorial Fund Project No. 756-60-104).

II. Sports Medicine

1. Statistical compilation and analysis of fatalities and injuries in Judo.
2. Worldwide survey to determine at what age Juniors can safely start Judo competition.
3. Worldwide survey on Judo injuries among female competitors.
4. To write a text for the International Judo Federation on first aid procedures used for acute injuries in Judo.

## HAHNEMANN MEDICAL COLLEGE AND HOSPITAL COMMITTEES

| | | |
|---|---|---|
| 1. | Library Committee | 1955 - 1965 |
| 2. | College Council | 1961 - 1962 |
| 3. | Hospital Council | 1967 - 1969 |
| 4. | Hospital By-laws Committee | 1963 - 1969 |
| 5. | Graduate School Committee | 1965 - 1970 |
| 6. | College By-laws Committee | 1971 - 1975 |
| 7. | Curriculum Committee | 1970 - 1973 |
| 8. | Core I Promotion Committee | 1974 - 1977 |

9. Medical Audit Committee 1977 - 1979
10. Medical Records Committee 1972 - present
11. Multiple Track Committee 1973 - present
12. College Admissions Committee 1964-8; 1977 - present
13. College of Allied Helath [*sic*] Professions, Council 1977 - present
14. Council on Continuing Education 1977 - present
15. Patient Care Committee 1978 - present
16. Animal Welfare Committee 1979 - present
17. Graduate School By-laws Committee 1979 - present

HAHNEMANN ALUMNI ASSOCIATION

Member, Board of Trustee 1964-69; 1972-79
President, 1971 - 1972
Secretary, 1979 - present

*SUPPLEMENTAL ACTIVITIES*

*Offices held:*

Chairman, Middle Atlantic AAU Judo Committee 1955 - 1973
President, Shufu Judo Yudanshakai 1965 - 1968
President, Eastern College Judo Association 1966 - 1970
Chairman, National AAU Judo Committee 1966 - 1969
President, Middle Atlantic AAU Association 1968 - 1969
President, US Judo Federation 1968 - 1976
Chairman, US Olympic Judo Committee 1969 - 1973
Chairman, US Judo Federation Medical Committee 1960 - 1976
Chairman, Pan American Jduo [*sic*] Union Medical Committee 1969 - present

Chairman, International Judo Federation, Medical Committee 1964 - present
Chairman, National AAU Judo Committee, Medical Committee 1976 - present
Chairman, Mid Atlantic AAU Registration Committee 1978 - present
Member, Advisory Board, Physicians Martial Arts Association 1978 - present

*Consultant to:*

Journal of the American Medical Association
American College of Sports Medicine
The Physician and Sports Medicine

*Chief Organizer:*

Interntional Judo Federation, for the Internation. Symposium of Sports Medicine in Judo, Oct. 18, 1969, Mexico City, Mexico, Oct. 20, 1975, Vienna, Austria, Dec. 2, 1979, Paris, France.

*Certified International Judo Federation Referee:*

Officiated at:

The 1971 World Judo Championship at Ludwigshafen, West Germany

The 1972 Olympic Games, Munich, West Germany

The 1976 Olympic Games, Montreal, Canada

Selected as Member of Medical Jury at the 1980 Olympic Games, Moscow, USSR

*Judo Rank* — Sixth Degree Black Belt

Exhibit B can be found at 41a-51a of the petition for certiorari.

## Exhibit C

### *The Cervical Triangles*

Various cervical muscles together with the mandible and the clavicle form the boundaries of triangular regions in the neck on each side known as the cervical triangles (fig. 382). The sternocleidomastoid muscle laterally, the mandible above, and the midline medially bound the **anterior cervical triangle.** This is subdivided into three smaller triangles by the digastric muscle above and the superior belly of the omohyoid below. These three smaller triangles are called the *submaxillary* (submandibular), the *superior carotid,* and the *inferior carotid.* The *submental triangle* is an additional small, unpaired area bounded on each side by the anterior belly of the digastric, and posteriorly by the body of the hyoid.

The **submaxillary** (submandibular) or *digastric* **triangle** is bounded above by the mandible and a line drawn back to the mastoid process, behind by the stylohyoid and posterior belly of the digastric, and in front by the anterior belly of the digastric. The submaxillary gland, external maxillary (facial) artery, and anterior facial vein are among the structures found in the submaxillary triangle.

The *superior carotid triangle* is bounded above by the posterior belly of the digastric, below by the omohyoid, and behind by the sternocleidomastoid. Many important structures lie within the boundaries of this space, such as the carotid arteries, internal jugular vein, the vagus nerve, and cervical sympathetic trunk.

The **inferior carotid** (muscular) **triangle** is bounded above by the omohyoid muscle, behind by the sternocleidomastoid muscle, and in front by the midline of the neck. It contains the inferior thyroid vessels, inferior laryngeal nerve, trachea, thyroid gland, and esophagus.

Of practical importance is **Lesser's triangle,** a space bounded by the anterior and posterior bellies of the digastric muscle caudally and the hypoglossal nerve cranially. The floor of the triangle is the hyoglossus muscle, deep to which runs the lingual artery, the triangle serving as an approach to the artery.

The **posterior cervical triangle** is bounded anteriorly by the sternocleidomastoid, posteriorly by the trapezius, and inferiorly by the clavicle. The inferior belly of the omohyoid passes obliquely across it dividing it into two smaller triangles, the larger *occipital* above and the smaller *subclavian* below. The **occipital triangle** contains the accessory nerve and parts of the cervical and brachial plexuses, and some of the deep cervical lymph nodes. The occipital artery crosses the apex of this triangle.

The **subclavian triangle** (trigonum omoclaviculare) corresponds to a surface depression, the supraclavicular fossa. Here the brachial plexus may be felt, and by pressure downward the subclavian artery can be compressed upon the first rib.

## HOW SAFE IS CHOKING (*SHIME-WAZA*) IN JUDO?

*by E. K. Koiwai, M.D.*

Choking or *shime-waza* has been used since the advent of Judo as a sport. It is still being allowed today except for juniors in actual competition. A match is won when the opponent submits or becomes unconscious. Among those who reject the use of choking are parents and physicians.

How safe is choking in Judo? Almost every judoist with experience has been choked either to submission or actual unconsciousness. In almost every contest one or two contestants have been choked to submission or unconsciousness. It is not unusual to have the unconscious contestant, after revival, look around to find out where he is. He still wants to continue to fight not realizing that he had lost the contest by *shime-waza*.

The technique of *shime-waza* used in Judo exemplifies one of Jigoro Kano's doctrines of "Maximum Efficiency with Minimum Effort". If properly applied, the weaker and smaller person can subdue and defeat a stronger and bigger adversary. Actually it is difficult to choke since most experienced players will fight intensively to avoid being choked. To choke effectively the opponent's body must be controlled first since there are many techniques used to escape from a *shime-waza*.

Basically, except for one form of *shime-waza, hadaka-jime*, the pressure is applied to the lateral side of the neck which the anatomists call the "carotid triangle". This triangle is formed by the midline, anteriorly (front) from the apex of the chin to the upper border of the mandible (lower jaw bone) and posteriorly (behind) by the anterior border of the sternocleidomastoid muscle (strap muscle between the clavicle and to the bone of the skull behind the ear). In the center of this triangle are the jugular veins, carotid artery

and its branches and the carotid sinus. No strong muscle protects this area. The pressure is applied in a certain manner, depending upon the technique, directly on these structures. It may be the fist or the collar of the *judogi*. Very often it is the pressure of the distal end of the radius and the wrist which compresses the soft structures of the neck. Until the above named structures are sufficiently compressed the choke will not be effective. The neophyte may submit not because of the choke but because of the fear of being choked or the pain produced by improper choking methods.

*Hadaki-jimi* differs from other forms since part of the pressure is also applied to the larynx and trachea which is extremely painful and the player will usually submit before unconsciousness intervenes.

Using the collar of the *judogi* for choking takes more time than using the bony structures of the wrist and forearm. The pressure exerted is diffused around the neck and until the pressure is sufficient on the carotid triangle the choke will not be effective.

Considerable scientific research has been done by the Japanese. These results are published in two reports of the Bulletin of the Association for Scientific Studies on Judo, Kodokan, in 1958 and 1963. They studied the physiological effects of choking in Judo by using the electroencephalogram for brain wave changes, the earoxymeter for blood oxygen saturation, the sphygmomanometer for arterial blood pressure, the plethysmograph for reaction of peripheral blood vessels, the micro-pipometer for skin temperature changes. Others also studied the plasma protein concentration, blood water volume, hematocrit, complete blood count, eosinophil count, and urine 17 keto-steroid content. They were, of course, interested to know if there were any deleterious effects during and after the *shime-waza* was ap-

plied and what precautions should be taken to prevent any serious consequences.

The following are some of the conclusions made based on their experiments with human subjects and animals.

1. Unconsciousness occurs approximately 10 seconds (8-14 seconds) after choking. After release from the choke hold, the subject regains consciousness naturally (spontaneously) without difficulty in 10-20 seconds.

2. In *Hadaka-jimi* the pressure on the larynx and trachea produced excruciating pain but there was no pain in other techniques before unconsciousness.

3. The unconsciousness resulting from choking in judo is mainly due to lack of oxygen and metabolic disturbances created in the brain, as a result of disturbance of cerebral circulation.

4. The appearance of flushing of the face is due to disturbance in pressure in the carotid arteries and jugular veins.

5. When convulsions occur, the EEG findings are very similar to a very short epileptic seizure.

6. Tachycardia (increased heart rate), hypertension (increased blood pressure) and mydriasis (dilatation of the pupils) were caused by stimulation of the sympathetic nervous system (vagus nerve).

7. Tachycardia and hypertension may be also attributed to the carotid sinus reflex.

8. All other laboratory studies show changes that are similar to conditions accompanying central shock. Choking in Judo acts as a stressor on the circulator and hypophysio-adrenocortical system.

9. According to their experience, no deleterious after effects remain after being "choked".

10. It is considerably less dangerous than a "knock-out" in boxing and there is no necessity of completely

excluding "choking" from Judo, provided necessary precautions are taken.

There are, however, three main dangers of choking based upon the above experiments.

1. To perform a "choking" hold on subjects with cardiac disorders or with hypertension.
2. To apply "choking" on youngsters whose central nervous system and heart have not yet attained complete development.
3. To continue the hold after the subject falls unconscious.

Since the advent of Judo, first developed by Professor Jigiro Kano in 1882, no death directly attributed to choking has been reported. There are four main reasons why fatalities do not occur:

1. Choking, whether in practice or competition is supervised and observed by qualified trained instructors and officials.
2. The contestant submits before unconsciousness occurs.
3. After choking the contestant regains consciousness naturally and spontaneously without difficulty in ten to twenty seconds.
4. The immediate application of artificial respiration by the qualified instructor or official prevents prolonged hypoxia.

Choking in Judo is safe because since the advent of Judo statistics show no fatality attributed to the *shime-waza*, moreover, scientific studies on choking reveal no deleterious after effects. Finally, the precautionary rules and methods used make the technique of choking a relatively safe means of subduing an opponent in competition.

**Excerpts From the Deposition of Eichi K. Koiwai, M.D. September 22, 1980 (Exhibit 66).**

* * *

(Page 51, lines 8-24; page 52, line 1):

BY MR. MITCHELL:

Q: When you say, on the next sentence, and I am on Page 4, Line 1, again, "The recipient will submit only because of the excruciating pain to the neck."

Are you referring to the TWO METHODS OF "naked choke" in it? You have distinguished them, the "hand clasp" and the one hand behind the suspect's head as the two methods.

A. If the pressure is on the larynx or trachea or the Adam's Apple, either method, when pressure is applied on these areas, it can be painful and they will submit.

Q. You say "excruciating pain."

A. Yes.

Q. Have you experienced that?

A. Oh, yes.

Q. Is it quite painful?

A. Yes.

* * *

(Page 88, lines 16-24; page 89, lines 1-24):

BY MR. MITCHELL:

Q: On Page 313 of your article, Doctor, the second paragraph, in the last sentence, referring to the Japanese who did the two reports, you say, "They were, of course, interested to know if there were any deleterious effects during and after the Shime-waza was applied and what precautions should be taken to prevent any serious consequences."

Is "serious consequences" your words or theirs?

A: I guess both of ours.

Q: What did you mean by "serious consequences"?

A: Death, fatality.

Q: Then, you go on to talk about conclusions that were made, based upon their experiments with human subjects and animals.

In Paragraph 1, you say, "Unconsciousness occurs approximately 10 seconds (8-14 seconds) after choking."

In what form of a choke does this unconsciousness occur? The carotid?

A: Yes.

Q: And not beginning at the frontal area of the throat?

A: No.

Q: Unconsciousness does not occur with respect to a "choke hold" applied to the frontal area of the throat?

Yes. As I mentioned before, with pressure on the throat, they give up.

* * *

(Page 163, lines 11-24; page 164, lines 1-23):

BY MR. MITCHELL:

Q: Have you ever seen where someone has been choked and they are given artificial respiration?

A: Or choked too long.

Q: In those, they didn't come up?

A: We have trouble getting them out, on occasion. The instructor is too stupid.

Q: What case was this?

A: This was one of our instructors in Seattle working with another black belt and doing ground work. He choked him. He wouldn't give up. The instructor wouldn't give up,

and the other fellow kept choking him, and the instructor went unconscious.

Q: Did you have to give him artificial respiration?

A: Yes, we did, after he defecated and urinated. These are terms applied to terminal fatalities. He said he had a terrible dream.

Q: You say that he almost did die?

A: I say no. He was young, then, but the other instructors knew what to do — Kappo. It is the Japanese method of resuscitation.

Q: Mr. Bruce Tegner has written a book published in 1961, and I will quote, in a California Appellate Court case, "That you should never practice choking on someone unless there is some person who was qualified in the Kappo technique of resuscitation."

Would you agree with that?

A: No.

Q: But that fellow, the instructor, who defecated and urinated and was almost a terminal fatality, do you think he would have died unless somebody hadn't given the Kappo technique and resuscitated him?

A: I wouldn't know, because at that time, I was a student and I saw what happened.

Q: What is your opinion, now?

A: I figure that it did help him because he was alive.

* * *

**Declaration of Henry W. Dodge, M.D. October 28, 1980 (Exhibit 53).**

Declaration of Henry W. Dodge, Jr. in Opposition to the Issuance of a Permanent Injunction or a Declaration That the Bar-Arm or Carotid-Control Holds Are an Unconstitutional Application of Force.

United States District Court, Central District of California.

(Title omitted in printing).

No. CV 77-0420-RMT.

I, Henry W. Dodge, Jr., declare as follows:

1. My name is Henry W. Dodge, Jr. I am a neurological surgeon and my business address is 139 S. Alvarado Street, Los Angeles, California 90057. I am licensed to practice medicine in the State of California and in several other states. I am also a Clinical Professor of Anatomy at the University of Southern California Medical School at Los Angeles. I was formerly an Assistant Professor of Neurological Surgery, University of Minnesota Graduate School at the Mayo Clinic, Rochester, Minnesota. A copy of my curriculum vitae and bibliography are attached hereto, as Exhibit "A".

2. In preparing for this declaration I have done the following:

a. I studied in detail the training bulletin of the Los Angeles Police Department, dated May 8, 1978, Volume 10, Issue 12.

b. I visited the Los Angeles Police Academy and observed live demonstrations of the use and application of the various control holds described in the above training bulletin, as well as the karate kicks and baton methods authorized by the Los Angeles Police Department. During the demonstrations by the Police

Academy staff I had the opportunity to actually feel and see the region of the application of the control holds, and to correlate this knowledge with my knowledge of the anatomy of these areas, and to question the participants.

c. I reviewed and studied in detail the following autopsy reports: 1 — Davis Randall Adkins; 2 — Carl M. Middleton; 3 — Frank Fairbanks; 4 — Edward Dailey; 5 — Alvin Whitchead; 6 — Ferdinand Bell; 7 — James Wright; 8 — Robert Cameron; and 9 — Booker T. Ford.

d. I have taken the time and utilized the opportunity to proceed to the Anatomy Laboratories of the Department of Anatomy of the University of California School of Medicine, and in the company of a full-time anatomist in the Department, refreshed my memory of the anatomy of the neck, by utilizing cadaver dissection. This was done even though, as a surgeon, I frequently operate in the neck, in order to refresh my memory of some of the small details which may not be encountered in certain surgical approaches to the vital areas of the neck.

3. The following facts and conclusions are based upon my personal knowledge, supplemented by various studies outlined above, and facts represented to me. If I should be called as a witness I would competently testify to the below.

*CAROTID-ARTERY CONTROL HOLDS*

4. Based upon my observations of how these control holds are applied it is my opinion that if these holds are applied as demonstrated they will not cause injury of a serious nature to the vago-laryngeal nerve complex or to the carotid arteries. These holds will not result in cardiac arrest or death. The vagus and laryngeal nerves lie deep in the neck and are protected by a large and powerful sternoclei-

domastoid muscle. When the holds are applied, the diffuse pressure of the arm does not injure these nerves, nor does it cause tear or intimal damage to the carotid arteries. The assumption that cardiac arrest can be caused by pressure on the vagus nerves or the nerves in the neck or the carotid artery is a remote theoretical possibility, not practically encountered when the application of pressure is diffuse. Even direct finger compression of the vagus may produce cardiac slowing, but is highly unlikely to cause cardiac arrest.

5. Those who suggest that these nerves may participate in a cardiac arrest have failed to realize that many of the street combatants are under the influence of alcohol, various types of drugs, combinations of drugs and alcohol, or who may have basic pathological diseases of the body. These conditions would predispose a person to occasional cardiac arrest. It would be these conditions and not pressure to the vago-laryngeal nerve or carotid pressure which would cause cardiac arrest.

6. With combat and anger, the release of adrenalin in the body during a fight, and the combination of this with the previous ingestion of other types of drugs, is a much greater threat for the rare cases of cardiac arrest, than any problems caused by the choke hold on the nerves or the carotid arteries. Also, one is apt to overlook the occasional case of cardiac standstill due to aspiration of vomitus with respiratory obstruction in the alcoholic or drugged individual.

7. From the material presented to me in the training bulletin, and as represented to me in the demonstrations at the Police Academy, it is my opinion that the carotid-artery control holds afford little danger to the cervical spine from the standpoint of fracture/dislocation with hemorrhage. The

proper application of these holds as described in the training bulletin and as demonstrated to me at the Academy, is designed to prevent injury to the cervical spine.

*BAR-ARM CONTROL HOLDS*

8. The application of this Bar Arm Control Hold, if exerted with greater than necessary force, does pose a threat to the respiratory system. My review and my knowledge of the relevant anatomy, and the various autopsy reports involved, indicates that the few problems which have arisen are due to the respiratory system, and not to the involvement of the carotid artery, the vagus or the laryngeal nerve.

The danger of the Bar-Arm Control Hold is as the result of injuries to the respiratory system and structures related to the respiratory system such as the small bones in the front of the neck, the larynx and the trachea.

*CONCLUSION*

9. It should be recognized that in any confrontation between a police officer and an aggressive adversary, there is danger of inadvertant injury. It is my opinion that the carotid-artery control holds and the bar-arm control holds will not cause damage to the carotid arteries, vago-laryngeal complexes with resultant cardiac arrest or death.

The problem with the bar-arm control hold is that it can occasionally cause injury to the respiratory system. However, based upon the number of confrontations between the police and combative citizens, as represented to me, it is my opinion that these control holds do not constitute the use of deadly force. It is obvious that as scientific expertise develops, and through research effort expansion, other methods will become available for subduing humans who are combative, without the necessity for interpersonal physical contact. However, until such methods are developed

and perfected, it is my opinion that the carotid-artery control holds represent a relatively safe means of subduing combative individuals, and that the bar-arm control hold, although carrying a certain degree of risk to the respiratory system, will in most occasions, not result in injury.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 28 day of October, 1980, at Los Angeles, California.

/s/ Henry W. Dodge, Jr.
HENRY W. DODGE, JR.

PROFILE
of
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Born: 29th January, 1918; Houston, Texas; Religion: Episcopal.

*SCHOOLS ATTENDED*

PHILLIPS EXETER ACADEMY, New Hampshire, 1934-1936.

Scheffield Scientific School, YALE UNIVERSITY, New Haven, Connecticut, 1936-1940, B.S.

COLLEGE OF PHYSICIANS AND SURGEONS Columbia University, New York City, 1940-1943, M.D.

UNIVERSITY OF MINNESOTA GRADUATE SCHOOL OF MEDICINE (Neurological surgery), 1951, M.S. Neurological Surgery.

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THE JOHNS HOPKINS HOSPITAL, Baltimore, Md., Jan-Oct 1944, General Surgery.

Military Service, U.S. Army, Captain, 1944-Feb 1947, General Surgery.

After World War II became Commander, M.D., U.S. Naval Reserve.

Special Consultant, Surgeon General, U.S. Navy, 1959-1960

THE PRESBYTERIAN HOSPITAL, Columbia University Medical Center, New York, August 1947-January 1948, General Surgery.

THE MAYO CLINIC, Rochester, Minnesota, January 1948, Fellow-Neurosurgery.

THE MAYO CLINIC, Rochester, Minnesota, July 1951, Asst. Staff Neurosurgery.

THE MAYO CLINIC, Rochester, Minnesota, 1952, Staff, Neurosurgery.

UNIVERSITY OF MINNESOTA Graduate School, 1952, Instructor, M.S.

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INTERNATIONAL COLLEGE OF SURGEONS
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*BIBLIOGRAPHY*

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NEUROLOGICAL SURGERY

1. LUMBAR EXTRADURAL HEMATOMA. Report of case simulating protruded disc syndrome. Journal of Neurosurgery 12:587-588, 1950 (With Svien and Adson)
2. ARRESTED HYDROCEPHALUS: Report of case. Proc. Staff Meet. Mayo Clinic 25;518-522 (Aug 30) 1950. (With Svien and DuShane)
3. LOW BACK AND SCIATIC PAIN. Minnesota Med. 34:57-58 (Jan.) 1951. (With Svien)
4. TUMORS OF THE SPINAL CORD WITHOUT NEUROLOGIC MANIFESTATIONS. Producing Low Back and Sciatic Pain. Proc. Sta-f Mee:. Mayo Clinic 26:88-95 (Feb. 28) 1951. (With Svien, Camp and Craig)
5. BRAIN TUMORS. A study of postoperative results and survival periods. Post-graduate Med. 9:198-210 (March) 1951. (With Adson and Svien)
6. Thesis: SOLITARY BENIGN PERIPHERAL NERVE TUMORS: A clinical pathological evaluation. April, 1951.
7. THE IMPORTANCE OF SPINAL FLUID ANALYSIS AND CONTRAST MYELOGRAPHY WHEN

PROTRUDED LUMBAR DISC IS SUSPECTED. S.G.&O. 93:643-644 (Nov.) 1951. (With Svien and Camp)

8. ACUTE HEAD INJURIES. GP, 4:59-65 (Dec.) 1951. (With Svien)
9. DUMBBELL (HOURGLASS) NEUROFIBROMAS AFFECTING THE SPINAL CORD. S.G.&O 94:161-172 (Feb.) 1952. (With Love) Also: America Clinica 21: 211-216 (Sept) 1952.
10. PERIPHERAL NERVE INJURIES. GP 5:57-63 (March) 1952. (With Svien)
11. EVALUATION OF "SETON" PROCEDURE IN THE TREATMENT OF INFANTILE COMMUNICATING HYDROCEPHALUS. Journal of Pediatrics 40:298-302 (March) 1952. (With Svien, Love and Keith)
12. VENTRICULOMASTOID SHUNT IN THE MANAGEMENT OF OBSTRUCTION TO THE AQUEDUCT OF SYLVIUS IN THE ADULT: Report of case. Proc. Staff Meet Mayo Clinic 27:215-218 (May 21) 1952. (With Svien and Lake)
13. ASTROCYTOMA OF THE PONS WITH LONG SURVIVAL AND ULTIMATE VENTRICULOMASTOIDOSTOMY. Proc. Staff Meet. Mayo Clinic 27:219-224 (May 21) 1952. (With Miller, Lake and Craig)
14. DUMBBELL (HOURGLASS) NEUROFIBROMAS AFFECTING THE SPINAL CORD. Proc. Staff Meet. Mayo Clinic 27:249 (June 18) 1952. (With Love)
15. SUGAR CONTENT OF THE CEREBROSPINAL FLUID IN DUFFUSE NEOPLASTIC INVOLVEMENT OF THE MENINGES. Proc. Staff Meet. Mayo Clinic 27:259-266 (July 2) 1952.

16. INTRASPINAL LESIONS MASQUERADING AS PROTRUDED LUMBAR INTERVERTEBRAL DISKS. J.A.M.A. 149:250-253 (May 17) 1952. (With Craig, Svien and Camp)
17. THE SURGICAL TREATMENT OF MALIGNANT EXOPHTHALMOS. Surg. Clinic of North America 32:991-1003 (Aug) 1952. (With Craig)
18. COMMUNICATING HYDROCEPHALUS FROM DIFFUSE MENINGEAL TUMOR. A.M.A. Archives of Neurology and Psychiatry 68:329-338 (Sept) 1952. (With Adson and Kernohan)
19. ASTROCYTOMA OF THE PONS WITH LONG SURVIVAL AND ULTIMATE VENTRICULO-MASTOIDOSTOMY. Digest of Ophthalmology and Otolaryngology 14:762-767 (Oct.) 1952. (With Miller, Lake and Craig)
20. SURGICAL TREATMENT OF PROGRESSIVE EXOPHTHALMOS. Annals of Surgery 136:366-374 (Sept.) 1952. (With Craig)
21. TECHNIC OF DEPTH ELECTROGRAPHY. Proc. Staff Meet. Mayo Clinic 28:147-155 (March 25) 1953. (With Holman, Sem-Jacobsen, Bickford and Petersen)
22. DEPTH DISTRIBUTION OF NORMAL ELECTROENCEPHALOGRAPHIC RHYTHMS. Proc. Staff Meet. Mayo Clinic 28:156-161 (March 25) 1953. (With Sem-Jacobsen, Bickford and Petersen)
23. SOME EFFECTS OF BARBITUATE ANESTHESIA ON THE DEPTH ELECTROGRAM. Proc. Staff Meet. Mayo Clinic 28:162-165 (March 25) 1953. (With Bickford, Faulconer, Sem-Jacobsen, Petersen and Schnugg)
24. HUMAN OLFACTORY RESPONSES RECORDED BY DEPTH ELECTROGRAPHY. Proc. Staff Meet.

Mayo Clinic 28:166-170 (March 25) 1953. (With Sem-Jacobsen, Bickford and Petersen)

25. THE DEPTH ELECTROGRAM IN SCHIZOPHRENIC PATIENTS. Proc. Staff Meet. Mayo Clinic 28:170-175 (March 25) 1953. (With Petersen, Bickford and Sem-Jacobsen)

26. STUDIES ON THE ELECTRICAL STRUCTURE AND ACTIVATION OF AN EPLILEPTOGENIC FOCUS. Proc. Staff Meet. Mayo Clinic 28:175-180 (March 25) 1953. (With Bickford, Sem-Jacobsen, and Petersen)

27. OBSERVATIONS ON DEPTH STIMULATION OF THE HUMAN BRAIN THROUGH IMPLANTED ELECTROGRAPHIC LEADS. Proc. Staff Meet. Mayo Clinic 28:181-187 (March 25) 1953. (With Bickford, Peterson and Sem-Jacobsen)

28. NEUROSURGICAL AND NEUROLOGIC APPLICATION OF DEPTH ELECTROGRAPHY. Proc. Staff Meet. Mayo Clinic 28:188-191 (March 25) 1953. (With Bailey, Bickford, Petersen, Sem-Jacobsen and Miller)

29. ACRYLIC CRANIOPLASTY: A Newer Method for the Repair of Cranial Defects: Preliminary Report. Proc. Staff Meet. Mayo Clinic 28:256-257 (May 6) 1953. (With Craig)

30. TRANSCRANIAL REMOVAL OF INTRA-ORBITAL TUMORS. A.M.A. Arch. of Surgery. 67:370-379 (Sept.) 1953. (With Love)

31. MANAGEMENT OF THE PATIENT WITH LOW BACK AND SCIATIC PAIN. Langenbecks Arch u. Dtsch. Z. Chir., Bd. 277, S. 237-244 (1953). (With Svien and Janes)

32. EXPERIMENTAL USE OF A PREPARATION OF ETHYL DIIODOSTRATE AS A CONTRAST MEDIUM FOR DIAGNOSTIC CEREBRAL ANGIOGRAPHY. Journal of Neurosurgery 10:453-456 (1953). (With Uihlein and Grindlay)
33. TRATAMIENTO QUIRURGICO DEL EXOFTALMOS MALIGNO. America Clinica 23:178-183 (Agosto) De 1953. (With Craig)
34. A NEW METHOD OF RECORDING FROM SUBCORTICAL LEVELS OF THE HUMAN BRAIN. EEG and Clinical Neurophysiology, Supp. No. 3 (August) 1953 (Abstract only). (With Bickford, Sem-Jacobsen and Petersen)
35. HUMAN OLFACTORY RESPONSES RECORDED BY DEPTH ELECTROGRAPHY. EEG and Clinical Neurophysiology, Supp. No. 3 (August) 1953 (Abstract only) (With Sem-Jacobsen, Bickford and Petersen)
36. OBSERVATIONS OF THE RESPONSE TO HYPERVENTILATION RECORDED FROM THE DEPTHS OF THE FRONTAL LOBE IN MAN. EEG and Clinical Neurophysiology (Abstract). Presented at Central EEG Society, St. Louis, November 7, 1953. (With Sem-Jacobsen, Petersen, Bickford and Lazarte)
37. CONCENTRATION OF ANTIBIOTICS IN THE BRAIN. The Journal of Lab. and Clinical Medicine 43:275-279 (Feb.) 1954. (With W.E. Wellman, F.R. Heilman, and Magnus Petersen)
38. TECHNICS AND POTENTIALITIES OF INTRACRANIAL ELECTROGRAPHY. Post-graduate Med. 15:291-300 (April) 1954. (With R.G. Bickford, A.A. Bailey, C.B. Holman, M.C. Petersen and C.W. Sem-Jacobsen)

39. CEREBROSPINAL FLUID OTORRHEA TREATED BY AN UNUSUAL METHOD. Ann. Otol. Rhin. & Laryng. 63:207-211 (March) 1954.
40. USE OF POLYVINYL FORMAL SPONGE IN NEUROSURGERY. Journal of Neurosurgery 11:258-261 (May) 1954. (With Grindley and Ross)
41. RECENT TRENDS IN THE SURGICAL MANAGEMENT OF INFANTILE HYDROCEPHALUS. Minnesota Med. 37:440-443 (June) 1954. (With Mendelsohn)
42. SURGICAL TREATMENT OF TRIGEMINAL NEURALGIA IN THE OLDER AGE GROUPS. Journal of the American Geriatrics Society 2:467-479 (July) 1954. (With Love)
43. TUMORS OF THE FORAMEN MAGNUM. Journal of the International College of Surgeons 22:1-17 (July) 1954. (With Love and Thelen)
44. EMERGENCY CARE OF THE MULTIPLY INJURED PATIENT. GP 10:74-81 (Oct.) 1954. (With Johnson and Uihlein)
45. ACOUSTIC NEUROMAS IN CHILDREN: Report of 2 cases. Journal of Neurosurgery 11:505-508, 1954. (With Craig and Ross)
46. LYMPHOSARCOMA OF THE SPINAL EPIDURAL SPACE IN A SEVEN YEAR OLD CHILD: Report of case. Proc. Staff Meet. Mayo Clinic 29:571-577 (Oct.) 1954. (With Rodin and Hayles)
47. GLIOMA OF THE OPTIC NERVE: Report of case. Proc. Staff Meet. Mayo Clinic 30:21-22 (Jan. 12) 1955. (With Craig)
48. THE APPRECIATION OF FLAVORS. Postgraduate Med. 17:142-144 (Feb) 1955. (With Clark)

49. THE PAUCITY OF DEMONSTRABLE BRAIN DAMAGE FOLLOWING INTRACEREBRAL ELECTROGRAPHY: Report of case. Proc. Staff Meet. Mayo Clinic 30:215-221 (May 18) 1955. (With Petersen, Sem-Jacobsen, Sayre and Bickford)
50. ANTERIOR CERVICAL CORD COMPRESSION SIMULATING DEGENERATIVE DISEASE. Proc. Staff Meet. Mayo Clinic 30:154-160 April 20) 1955. (With MacDonald and Clark)
51. DYBDEELEKTROGRAFISKE STUDIER AV 94 PSYKOTISKE PATIENTER, DIAGNOSTISKE KLINISHE OG NEVROFYSIOLOGISKE RESULTATER. XI. Nordiske Psykiaterkongress, Oslo 8-11 Juni 1955. (With Sem-Jacobsen, Petersen, Lange, Lazarte and Holman)
52. ELECTROENCEPHALOGRAPHIC RHYTHMS FROM THE DEPTHS OF THE FRONTAL LOBE IN 60 PSYCHOTIC PATIENTS. Electroencephalography and Clinical Neurophysiology Journal 7:193-210 (May) 1955. (With Sem-Jacobsen, Petersen, Lazarte and Holman)
53. CONCENTRATION OF TETRACYCLINE IN THE SERUM AND SPINAL FLUID FOLLOWING INTRAMUSCULAR ADMINISTRATION. Proc. Staff Meet. Mayo Clinc 30:301-303 (June 29) 1955. (With Wellman, Petersen, and Heilman)
54. INTRACEREBRAL AND INTRACEREBELLAR ELECTROGRAPHY IN HUNTINGTON'S CHOREA. Proc. Staff Meet. Mayo Clinic 30:365-370 (August 10) 1955. (With Sem-Jacobsen, Petersen, Lazarte and Holman)
55. TREATMENT OF INTRACEREBRAL HEMATOMAS IN YOUNG AND MIDDLE-AGED PATIENT.

Neurology 5:567-572 (Aug.) 1955. (With Miller and Clark)

56. EFFECT OF ANOSMIA ON THE APPRECIATION OF FLAVOR. Neurology 5:671-674 (Sept.) 1955. (With Clark)
57. CERTAIN FALSE LOCALIZING SIGNS OF INTRACRANIAL TUMORS: Report of Case. Proc. Staff Meet. Mayo Clinic 30:453-461 (Oct. 5) 1955. (With Clark, Wagener and Hustead)
58. INTRACEREBRAL ELECTROGRAPHIC RECORDINGS FROM PSYCHOTIC PATIENTS DURING HALLUCINATIONS AND AGITATION. American Journal of Psychiatry 112:278-288 (Oct) 1955. (With Sem-Jacobsen, Petersen, Lazarte and Holman)
59. COMPLETE REMOVAL OF GLIOMAS AFFECTING THE OPTIC NERVE. A.M.A. Archives of Ophthalmology 54:386-391 (Sept) 1955. (With Love and Bair)
60. CLINICAL RESULTS OF SELECTIVE LEUKOTOMY BASED ON INTRACEREBRAL ELECTROGRAPHY. Journal A.M.A. 159.774-775 (October 22) 1955. (With Petersen, Sem-Jacobsen, Lazarte and Holman)
61. EXTRAOLFACTORY COMPONENTS OF FLAVOR. Journal A.M.A. 159:1721-1723 (Dec. 31) 1955. (With Clark)
62. A TEST FOR SAVOR (FLAVOR) WITH REPORT OF A CASE OF CONGENITAL ANOSMIA. Proc. Staff Meet. Mayo Clinic 31:321-315 (May 16) 1956. (With Clark)
63. ACOUSTIC NEUROMA WITH MENINGITIS AND SECONDARY COMMUNICATING HYDROCEPH-

ALUS: SUCCESSFUL TREATMENT. Journal of Neurosurgery 13:312-316 (July) 1956. (With Love, ReMine, Wellman and Campagna)

64. INTRASPINAL TUMORS IN INFANTS AND CHILDREN. Journal of the International College of Surgeons 26:199-215 (August) 1956. (With Keith and Campagna)

65. TUMORS OF THE SPINAL CORD: Occurrence in Patients With pernicious Anemia and Subacute Combined Sclerosis. J.A.M.A. 162:707-709 (Oct. 20) 1956. (With Hanlon, Siekert and Bull)

66. ELECTROENCEPHALOGRAPHIC RHYTHMS FROM THE DEPTHS OF THE PARIETAL, OCCIPITAL AND TEMPORAL LOVES IN MAN. EEG Clin. Neurophysiology. 8:263-278. 1956. (With Sem-Jacobsen, Petersen, Lazarte and Holman)

67. BENIGN TUMORS AT THE FORAMEN MAGNUM: Surgical Considerations. Journal of Neurosurgery 13:603-617 (Nov.) 1956. (With Love and Gottlieb)

68. CEPHALIO BRUITS IN CHILDREN. Journal of Neurosurgery 13:527-534 (Nov) 1956.

69. ELECTRIC ACTIVITY OF THE OLFACTORY BULB IN MAN. American Journal of the Med. Sci. 232:243-251 (Sept) 1956. (With Sem-Jacobsen, Petersen, Jacks, Lazarte and Holman)

70. THERAPEUTIC PROBLEMS IN DIABETES INSIPIDUS. Journal A.M.A. 163:341-344 (Feb. 2) 1957. (With Clark and Randall)

71. THE NEUROGENIC BASIS OF DIABETES INSIPIDUS: A Review. Proc. Staff Meet. Mayo Clinic 32:90-98 (March 6) 1957. (With Groethuysen, Clark and Randall)

72. EXPERIMENTAL DIABETES INSIPIDUS: A Study of the Normal Interphase. Proc. Staff Meet. Mayo Clinic 32:99-108 (March 6) 1957. (With Mudd, Clark and Randall)
73. POSTOPERATIVE DIABETES INSIPIDUS IN MAN: Report of Case. Proc. Staff Meet. Mayo Clinic 32:109-133 (March 6) 1957. (With Randall and Clark)
74. TREATMENT OF COMMUNICATING HYDROCEPHALUS BY SPINAL SUBARACHNOIDOMENTAL BURSA SHUNT: Preliminary Report. Minnesota Med. 40:227-230 (April) 1957. (With ReMine and Leavens)
75. TUMORS OF THE VAGUE NERVE. Proc. Staff Meet. Mayo Clinic 32:239-249 (May 15) 1957. (With Penido, Clagett and Starr)
76. BENIGN TUMORS OF PERIPHERAL NERVES AND THEIR MASQUERADE. Minnesota Med. 40:294-301 (May) 1957. (With Craig)
77. HALLUCINATORY EPILEPSY: Complex Hallucinations as Focal Seizures. American Journal of Psychiatry 113:1100-1102 (June) 1957. (With Mulder and Bickford)
78. BRAIN TUMORS: Practical Approach and Classification. Minnesota Med. 40:471-476 (July) 1957. (With Craig and Svien)
79. ARACHNOIDITIS OSSIFICANS: Report of two cases. Proc. Staff Meet. Mayo Clinic 32:698-704 (Nov. 27) 1957. (With Gatzke and Dockerty)
80. HEREDITARY MULTIPLE EXOSTOSES WITH COMPRESSION OF THE SPINAL CORD. Proc. Staff Meet. Mayo Clinic 32:728-734 (Dec. 11) 1957. (With Larson, Rushton and Dahlin)

81. WATER EXCHANGE IN DOGS FOLLOWING PARTIAL SECTION OF THE PITUITARY STALK. American Journal of Physiology. 191:59-63 (Oct) 1957. (With Campagna and Clark)

82. THE SIGNIFICANCE OF NUCHAL RIDIDITY. Postgrad. Med. 23:403-409 (April) 1958. (With Wood, Johnson and Mulder)

83. CHANGES IN MEMORY FUNCTION PRODUCED BY ELECTRICAL STIMULATION OF THE TEMPORAL LOBE IN MAN. From — The Brain and Human Behavior — Vol. XXXVI. Proceedings of the Association for Research in Nervous and Mental Disease. The Williams and Wilkins Co., Baltimore, 1958. pp. 227-243.

84. GLIOMAS OF THE OPTIC NERVES. A.M.A. Archives of Neurology and Psychiatry 79:607-621 (June) 1958. (With Love, Craig, Dockerty, Kearns, Holman and Hayles)

85. EPILEPTIC SEIZURES ASSOCIATED WITH MASS INTRACRANIAL LESIONS.
Proc. Staff Meet. Mayo Clinic 33:487-496 (Oct. 1) 1958.

86. OPHTHALMOLOGIC ASPECTS OF PORENCEPHALIC CYSTS. Proc. Staff Meet. Mayo Clinic 33:664-670 (Dec. 10) 1958. (With Lansche and Kearns)

87. CRANIOFACIAL DYSOSTOSIS: Crouzon's Disease. Pediatrics 23: 98-106 (Jan) 1959. (With M.S. Wood and R.L.J. Kennedy)

88. A MULTIELECTRODE LEAD FOR INTRACEREBRAL RECORDINGS. Electroencephalographic and Clinical Neurophysiology 11:165-169 (Feb) 1959. (With Chatrian, Petersen and Bickford)

89. INTRANASAL ENCEPHALOMENINGOCELES ASSOCIATED WITH CRANIUM BIFIDUM. A.M.A. Arch. Surg. 79:75 (July) 1959. (With Love and Kernchan)

90. DIABETES INSIPIDUS AFTER OPERATION FOR INTRACRANIAL TUMORS: Study of the Urinary Patterns in 67 Patients. In Press for J. Clin. Edocrinol. (With Love, Randall and Clark)

91. PITUITARY FAILURE: A Clue to the Diagnosis of Sellar Tumors. In press for Postgrad. Med. (With Clark and Randall)

92. OCCULT AND EXCESSIVE ANTIDIURETIC ACTIVITY IN EXPERIMENTAL DIABETES INSIPIDUS. American Neuro. Assoc. 84:167-168, 1959. (With E.C. Clark, R.V. Randall, M.J. Campagna and R.H. Mudd)

93. ELECTRICAL STUDIES ON THE UNANESTHETIZED BRAIN (Book) Author and Co-Author several chapters, 1960. Ramsey and O'Doherty, Paul B. Hoeber, Inc., N.Y. Chapter 11 — "Electrographic and Behavioral Effects Related to Depth Stimulation in Human Patients" — Reginald Bickford, Henry W. Dodge, Jr., and A. Uihlein. Chapter 12 — "Surgical Problems and Practical Indications for a depth Electrographic Procedure" — Henry W. Dodge, Jr. Chapter 14 — "Lambda Waves with Depth Electrodes in Humans" — Gian Emilio Chatrian, Reginald C. Bickford, Magnus C. Petersen, Henry W. Dodge, Jr., Jorge A. Lazarte and Colin B. Holman

94. EPILEPTIC SEIZURES, ASSOCIATED WITH MASS INTRACRANIAL LESIONS. Yearbook of Neurology, Psychiatry and Neurosurgery, 1959-1960 Series. pp. 555-556.

95. SCIENTIFIC EXHIBITS: Diabetes Insipidus: Current Concepts in the Production of Antidiuretic Hormones. Clinical and Experimental observations. (With R.V. Randall, E.C. Clark, R.C. Bahn, and A.H. Bulbulian)
96. ELECTRICAL STIMULATION OF THE BRAIN (Book) Chapter 9 —"Distant Evoked Responses to Single-Pulse Stimulation" 1961. Published for the Hogg Foundation for Mental Health by the University of Texas Press. Reginald G. Bickford, Hugh N.A. MacDonald, Henry W. Dodge, Jr., and Handrick J. Svien.
97. ACUTE INJURIES OF HIGH CERVICAL SPINE: Accompanied by Head Injuries. (October) 1963. Journal American Fracture Association, Pasadena, California.
98. THE MANAGEMENT OF ACUTE INJURIES TO THE HEAD. Proceedings of First Post-Graduate Medical Assembly of Mazatlan — Colegio de Medicos Cirujanos de Mazatlan, A.C. (Nov) 1963.
99. MANAGEMENT OF NEUROLOGICAL INJURIES ASSOCIATED WITH SEVERE TRAUMA. Second Postgraduate Assembly at Mazatlan (November) 1964.

*CURRENTLY IN PREPARATION*

Lumbar Laminectomies in the Elderly Patient.

Cervical Laminectomies in the Elderly Patient.

The Multiply Operated Back From the Neurosurgical Viewpoint.

"Pillow Talk" For the Neck and Back Patient.

Laminectomy and Spinal Fusion: A Medical Motion Picture in Collaboration with Dr. R. Watanabe.

*SPECIAL INTEREST*

Altered States of Consciousness; Coma.

Medi-Legal Lecture Series-University of Southern California

**Excerpts From the Deposition of Henry Dodge, M.D. November 14, 1989 (Exhibit 65).**

* * *

(Page 44, lines 4-25);

Q: One of the City's experts in this case, a martial arts expert, was asked the following question: "Is it a fair statement to say that pressure should not be applied to the frontal part of the throat unless death is the desired result?"

His response to that was "Yes.'

Do you agree or disagree with him?

A: I think so, basically, but it depends on the amount of force.

Q: But you do agree with him depending upon the amount that is applied?

A: Yes.

Q: You used the words "necessary force" in your Declaration. You say, "if exerted with greater than necessary force, it does pose a threat to the respiratory system."

What do you mean by "necessary force"?

A: The force necessary, as the training manual says, to gain control of an assailant.

Q: What do you mean by "gain control of"? Put in a position where he can be handcuffed?

A: To put him in position where he is able to be controlled, whatever they desire to do with him.

* * *

(Page 46, lines 12-28; page 47, lines 1-6):

Q: You indicate that the danger of the bar-arm control is as a result of injuries to the respiratory system structures related to the respiratory system such as the small bones in the front of the neck, the larynx and the trachea. By "small bones" do you mean to include the hyoid?

A: Yes, sir.

Q: Fracture of which can result in death and is a very serious injury in any event?

A: Can be, yes, sir.

Q: Fracture of the larynx is a very serious injury?

A: Yes.

Q: And is a fracture of the trachea?

A: Yes, sir.

Q: Doctor, do you think there is any way to predict whether when the bar-arm control is applied serious injury or death is going to result?

A: To predict it?

Q: Yes.

A: No, sir. I don't know how you could.

Q: Is there any way to predict when a bar-arm control is applied whether it will result in no injury?

A: No, sir.

* * *

(Page 47, lines 21-28; Page 48, lines 1-28; Page 49, lines 1-14):

Q: With respect to the last paragraph on that page under "Conclusions," you state "The problem with the bar-arm control hold is that it can occasionally cause injury to the respiratory system."

By "occasionally" do you mean five percent of the time, 50 percent of the time, 95 percent of the time?

A: I didn't have a figure.

Q: So it could be 95 percent of the time?

A: I don't think that would be occasionally. I don't think occasionally means that.

Q: What did you mean by "occasionally"?

A: I meant occasionally.

Q: No more specific than that?

A: No more specific than that.

Q: Isn't it also true that it could occasionally cause death?

A: It can, yes, sir.

Q: You have no personal knowledge of the number of confrontations between police and combative citizens in the City of Los Angeles; is that correct?

* * *

A: Same response, yes, sir.

Q: You say here, "it is my opinion that these control holds do not constitute use of deadly force."

Earlier you indicated that deadly force to you meant a life-threatening procedure or maneuver; is that correct?

A: Yes, sir.

Q: Do you consider the bar-arm control to be a life-threatening procedure or maneuver?

A: Yes, I think under certain circumstances. Yes.

Q: On the last page you state right there above your declaration under penalty of perjury that the bar-arm control, although carrying a certain degree of risk to the respiratory system, will in most occasions, not result in injury.

What do you mean by "in most cases"? 50 percent?

A: I don't have a figure except that in my reading of the newspapers and in discussing with officers the frequency of confrontations, if the bar-arm carried a high mortality rate, there would be more dead people.

Q: Do you have any idea of how many people have died in the last five years as a result of a bar arm?

A: No, I don't.

* * *

**Declaration of Richard H. Fine, M.D.**
**November 14, 1980 (Exhibit 36)**

United States District Court, Central District of California.

(Title omitted in printing)

State of California, County of San Francisco—ss.

I the undersigned, declare:

1. My name is Richard H. Fine. My business address is San Francisco General Hospital Medical Center, 1001 Potrero Avenue, San Francisco, CA 94110. I recite the following facts upon my personal knowledge and if called as a witness would testify competently thereto.

2. I am a medical doctor duly licensed to practice medicine in the State of California. I am an Associate Clincal Professor of Medicine at the University of California, San Francisco, CA. I am the Medical Director of the Outpatient Department of San Francisco General Hospital. Since 1972, I have also been the Medical Director of the San Francisco General Hospital Security Ward. A True copy of my Curriculum Vitae is attached hereto, marked Exhibit A, and incorporated herein by reference.

3. I have testified as an expert witness in forensic medicine in both State and Federal cases.

4. I have read and considered the Los Angeles Police Department Training Bulletin dated July 31, 1972, Vol. IV, Issues 16 & 17. It is my strongly held medical opinion that the bar arm control and carotid control are particularly dangerous, especially in acute jail settings where prisoners are taken directly off the street. Both "controls" can cause injury to the larynx, hyoid bone and/or thyroid. Their effects in an agitated person on the vagus nerve can cause cardiac arrest. Hypoxia to the brain can also occur if the carotid arteries are occluded too long.

5. The jail population has many predisposing factors which in my opinion increase the risk of serious injury using these "controls." Many arrestees are chronic alcohol abusers with cirrhosis and liver diseases. These patients often have coagulopathies (blood clotting defects) and have an increased risk of bleeding into the neck organs with subsequent asphyxia. Many arrestees are under the influence of drugs such as PCP (phencyclidine), which makes the arrestee exceptionally difficult to control, often requiring two or three large officers to subdue the arrestee. A wildly thrashing arrestee under the influence of PCP clearly suffers an increased risk of serious mechanical damage to his neck structures if such a "control" is applied.

6. The Security Ward at San Francisco General Hospital, of which I am the Director, is a 24-bed inpatient maxium security unit for prisoners needing hospitalization from the San Francisco County jails. Surgical, medical and psychiatric patients are hospitalized in the Ward. In 1974, a patient in the Ward was choked into submission, after having been administered coumadin, an anticoagulant drug. This resulted in bleeding into the neck requiring that the patient be given airway assistance. Since then it has been the policy of the Medical Staff and the San Francisco County Sheriff's Department that no choke or strangle holds are to be used to subdue or control violent patients for the reasons set forth above, and particularly because of the increased risk from bleeding. The policy is that violent patients are to be subdued by only several officers and/or use of mace to gain control.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 11 day of August, 1980 at San Francisco, California.

/s/ Richard H. Fine
RICHARD H. FINE, M.D.

Exhibit A

[Letterhead]

CURRICULUM VITAE

Name: Richard H. Fine, M.D.

Home Address: 84 Peralta Avenue, San Francisco, Calif. 94110.

Telephone: 647-2693.

Birthdate: June 6, 1940.

*EDUCATION*

B.A. in Anthropology, Cornell University, June, 1962

M.D., Cornell University Medical College, June, 1966

Internship at San Francisco General Hospital, July, 1966 - June, 1967

Two years residency in Internal Medicine at University of California Medical Center in San Francisco, July, 1967 - June, 1969

One year Clinical Associate in Medicine at San Francisco General Hospital, July, 1969 - June, 1970.

*WORK EXPERIENCE*

Summer Fellowship in Slow Virus Disease, National Institute of Health, with Dr. Gadjusek, 1963

Summer Fellowship in North Africa, studying Tropical Diseases, 1964

Field work on the Peruvian Amazon for Servicio Effluvial of Peruvian Public Health Service, 1966

Staff Physician of Black Man's Free Medical Clinic, 1968 - 1973

Assistant Chief, Medical Outpatient Department, San Francisco General Hospital, July, 1970 - June, 1975

Chief, Medical Outpatient Department, San Francisco General Hospital, July, 1975 - Present

Medical Chief of Hospital Security Ward, San Francisco General Hospital, November 1972 - Present

*PROFESSIONAL ACTIVITIES*

Associate Clinical Professor of Medicine and Ambulatory and Community Medicine, University of California, San Francisco, 1979

Consultant to County Medical Society on Young Physician's Committee, 1972 - 1975

Consultant to California Medical Association on Prison Health, 1972 - 1975

State Health Department Task Force on Local Jail Facilities, 1977

Committee Member Health Care Task Force, Board of Corrections, June, 1978 - Present

Assistant Project Director, Acebutolol Study, $30,000 — April, 1979 - to Present

*GRANTS*

Project Director, Medical Care Project for Institutionalized Persons (Prisoner's Health Project), a four year 1.2 million dollar HEW funded program to deliver outpatient services to prisoners, — 1974 - December, 1978.

Project Director, Hypertension Registry and Educational Program, $120,000 State Health Department Grant to improve hypertension education and hypertension services in the Medical Outpatient Department, January, 1977 - July, 1978

Professional Consultant to Medical Clinic Educational Fund, Inc., for grant development, 1976 - Present

Professional Consultant to the Board of Medical Quality Assurance, 1978 - Present

*REGULAR TEACHING ACTIVITIES*

20 lectures per year in Outpatient Medicine to ACM 110 students

3-4 (noon) conferences per year to San Francisco General Hospital Medical House Staff

4-6 seminars per year in Outpatient Medicine to Family Practice Residents

3-4 lectures per year to Nursing Organization at San Francisco General Hospital

Weekly half hour case conference with Staff of Hypertension Clinic

3-4 half days per week supervising House Staff and Consultants in General Medical Clinic, San Francisco General Hospital

*CURRENT HOSPITAL AND UNIVERSITY COMMITTEES*

Chairperson, Laboratory Advisory Committee, San Francisco General Hospital, 1976 - Present

Chairperson, Ad Hoc Committee on Drug Abuse, San Francisco General Hospital, July, 1977 - Present

Chairperson, Ad Hoc Committee on Podiatry, San Francisco General Hospital, July, 1976 - Present

Chairperson, Ad Hoc Committee on Dermatological Procedures, San Francisco General Hospital, July, 1976 - 1978

Member, Health Care Evaluation Committee, San Francisco General Hospital, 1975 - Present

Member, Advisory Committee to Chief of Staff on Future of San Francisco General Hospital, July, 1978 - Present

Member, Search Committee for New Chief of Medicine, San Francisco General Hospital, July, 1978 - Present

*COMMUNITY ACTIVITIES*

Member, Sheriff's Medical Advisory Board, 1972 - Present

Spokesman, Mayor's Committee to Study the Proposed Federal Prison, 1975

Member, Steering Committee, Bay Area Medical Committee for Human Rights, 1968-1975

Member, Association Medicana Peruana Norte Americana, 1966 - Present

Panelist, KQED Television Show on High Blood Pressure

*PUBLICATIONS*

Prison Health Editor of *Health Rights News*

Contributing author to *Health Liberation News*

Contributing author to *Synapse*

Co-author, Medical Section, *Beat the Heat*, Ramparts Press, 1972

Co-author of the Mayor's Committee *Report on the Proposed Federal Prison for San Francisco*

"Introduction", *Manual of Outpatient Medicine* Harbor General Hospital Press

"Use of Clinical Pharmacists as Physician Extenders" Abst in *Preventive Medicine*, Vol 7 : 1, March, 1978, p. 53

Contributor, *Acute Ambulatory Care for the House Officer* (Hypertension) Williams and Wilkins — In Press

**Declaration of Alex Griswold, M.D.**
**August 18, 1980 (Exhibit 37)**

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA.

(Title omitted in printing).

CASE NO. 77-0420-RMT.

State of California, County of Los Angeles — ss.

I, the undersigned, hereby depose and say:

1. My name is Alex Griswold. I am a physician duly licensed to practice medicine in the State of California. I maintain my medical offices at 1932 14th Street, Santa Monica, CA. I am not a party to this action and I am not related to nor have I ever met any party to this action. If called to testify, I would competently testify to the following facts and opinions.

2. I graduated from the University of Louisville Medical School in 1942. I took my internship at St. Joseph's Hospital from 1942 to 1943. I practiced medicine in the armed forces from 1943 to 1946. I took my residence in pathology from 1947 to 1950 at Wadsworth Veterans Hospital in Los Angeles, CA. I served as a pathologist in the offices of the Los Angeles County Medical Examiner-Coroner's Office from 1950 to 1963. I have also engaged in the private practice of pathology from 1950 to present.

3. I have been qualified and have testified as an expert in pathology on approximately fifty different occasions over the past twenty-eight years.

4. I am a Fellow of the American Academy of Forensic Sciences and a member of the Los Angeles County Medical Society and California Medical Association.

5. I have read and considered copies of the LAPD Training Bulletin, dated May, 1978, numbered Volume X, Issue

13, marked Exhibit A, attached hereto, and incorporated herein by reference.

6. The "control holds" described affect various structures, organs, arteries and nerves in the neck. I have caused to be prepared a diagram of a section of the neck at about the level of the sixth cervical vertebra which accurately depicts certain structures in the area affected. The diagram, marked Exhibit B, is attached hereto and incorporated herein by reference. In connection with preparing the diagram, I consulted the text and diagrams contained in *Anatomy, Descriptive and Surgical* (1901 Ed.) Henry Gray, F.R.S. at pp. 316, *et seq*. This is the classic historical work of medical science often referred to as *Gray's Anatomy* and it is reliable authority for descriptive and surgical anatomy.

7. As shown by the diagram, the large vessels of the neck (carotid artery and jugular vein) as well as the vagus nerves are contained in a strong sheath, denominated the carotid sheath.

8. The forward area of the neck contains, among other things, the trachea, larynx, esophagus, hyoid bone and thyroid. The structures have the following physiologies. the trachea is the passageway for air to and from the lungs. The larynx is part of the respiratory passage and primarily functions to form sounds and speech. The esophagus is the passageway for food and liquids to the stomach. The hyoid bone is the supporting structure for the muscle of the anterior neck and is in close association anatomically with the larynx and upper trachea and their cartilages. Injury to the hyoid involves hemmorage [*sic*] and swelling at or near the trachea and larynx.

*BAR ARM CONTROL*

9. From a medical point of view, the bar arm control is extremely dangerous in an unpredictable fashion. Pressure from a locked forearm across the neck sufficient to compress

and close the trachea applied for a sufficient period of time to cause unconsciousness from asphyxia must, to an anatomical certainty, also result in extreme pressure to the delicate organs in the front of the neck. This leads to a very high risk of a fractured hyoid bone or crushed larynx. The risk is substantial, but at the same time, unpredictable.

10. It depends for one thing on which vertical portion of the neck the forearm pressure is exerted. The LAPD Training Bulletin does not specify which portion of the neck should be compressed. If primary force were applied to the upper and middle portion of the throat directly under the chin, the result might be compression injury of the trachea, larynx, and hyoid bone. If the force were applied to the center and lower of the neck, the result might be compression injury to the trachea and thyroid.

11. Another factor contributing to unpredictability is the reaction of the victim. The frontal area of the neck is highly innervated with both sensory and motor nerves. The laryngeal and pharyngeal nerves are directly affected by the pressure exerted in a bar arm control. The traumatic interferences on these nerves can have at least two adverse effects. It can result in a laryngeal spasm or seizure which simply shuts off the trachial air passage, leading to death by asphixiation. Also, it must result in transmission to the brain of nerve messages that there is immediate, acute danger of death. This transmission immediately sets up a "fight or flee" syndrome wherein the body reacts violently to save itself or escape. Adrenalin output increases enormously; blood oxygen is switched to muscles and strong, violent struggle ensues which is to a great extent involuntary. From a medical point of view, there would be no way to distinguish this involuntary death struggle from a wilful, voluntary resistance. Thus, an instruction to cease applying the hold when "resistance ceases" is meaningless.

12. This violent struggle increases the risk that the forearm pressure applied will adversely affect vital, delicate organs in the throat and increases the risk of permanent injury or death to the victim. This reserve may already be in a state of reduction by reason of cardiac, respiratory or other disease.

13. The LAPD appears to recognize, if misconceive, the severe risk of harm arising from application of the bar arm control since it does recommend proceeding directly to a carotid hold (treated below). The misconception is that the length of time for applying the hold is the sole measure of risk. This is simply not true. If sufficient force is applied, the larynx can be crushed or hyoid fractured with death ensuing, in seconds. An irreversible laryngeal spasm can also occur in seconds.

14. Based upon the LAPD Training Bulletin, my experience and expertise as a physician and the foregoing facts, it is my medical opinion that application of the bar arm control constitutes the use of force that involves an unpredictably high risk of death to the victim.

*CAROTID CONTROL*

15. From a medical point of view, the carotid control is extremely dangerous in a manner that is at least as equally unpredictable as the bar arm control.

16. There are two carotid arteries, one on each side of the neck as shown in Exhibit B. They are contained in strong carotid sheaths which also contain, among other things, the juglar [sic] veins and the vagus nerves. The carotid arteries carry oxygenated blood from the heart to the brain. The carotid control appears to be designed to stop the flow of oxygenated blood to the brain. When applied with sufficient pressure, this control will crush the carotid sheath against the bony structure of the neck, foreseeably shutting down

the supply of oxygenated blood to the brain and leading to unconsciousness in approximately 10 to 15 seconds.

17. However, pressure on both carotid sheaths also results in pressure, if inadvertent or unintended, on both of the vagus nerves. The vagus nerves (right and left) arise in the brain and are composed of both sensory and motor fibers. The distribution of both includes the larynx, trachea, heart, lungs, stomach and accessory structures. Stimulation of these nerves by pressure can activate reflexes within the vagus system that can result in immediate heart stoppage (cardiac arrest).

18. *Pathophysiology, Altered Regulatory Mechanisms in Disease* (2d Ed. 1976) J.P. Lippincott Company is a work of medical science and is reliable authority for physiology, pathology and internal medicine. It states, at page 7, "The vagus has strong depressor activity on pacemaker cell function and is capable of eliciting total cardiac arrest under conditions of extreme stimulation." There is also evidence that cardiac arrest can result from simultaneous pressure on both vagus nerves regardless of the intensity or duration of the pressure.

19. Based upon the LAPD Training Bulletin, my experience and expertise as a physician and the foregoing facts, it is my medical opinion that application of the carotid control constitutes the use of force that involves an unpredictably high risk of death in the victim.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 18th day of August, 1980, at Los Angeles, CA.

/s/ Alex Griswold, M.D.
ALEX GRISWOLD, M.D.

Exhibit B

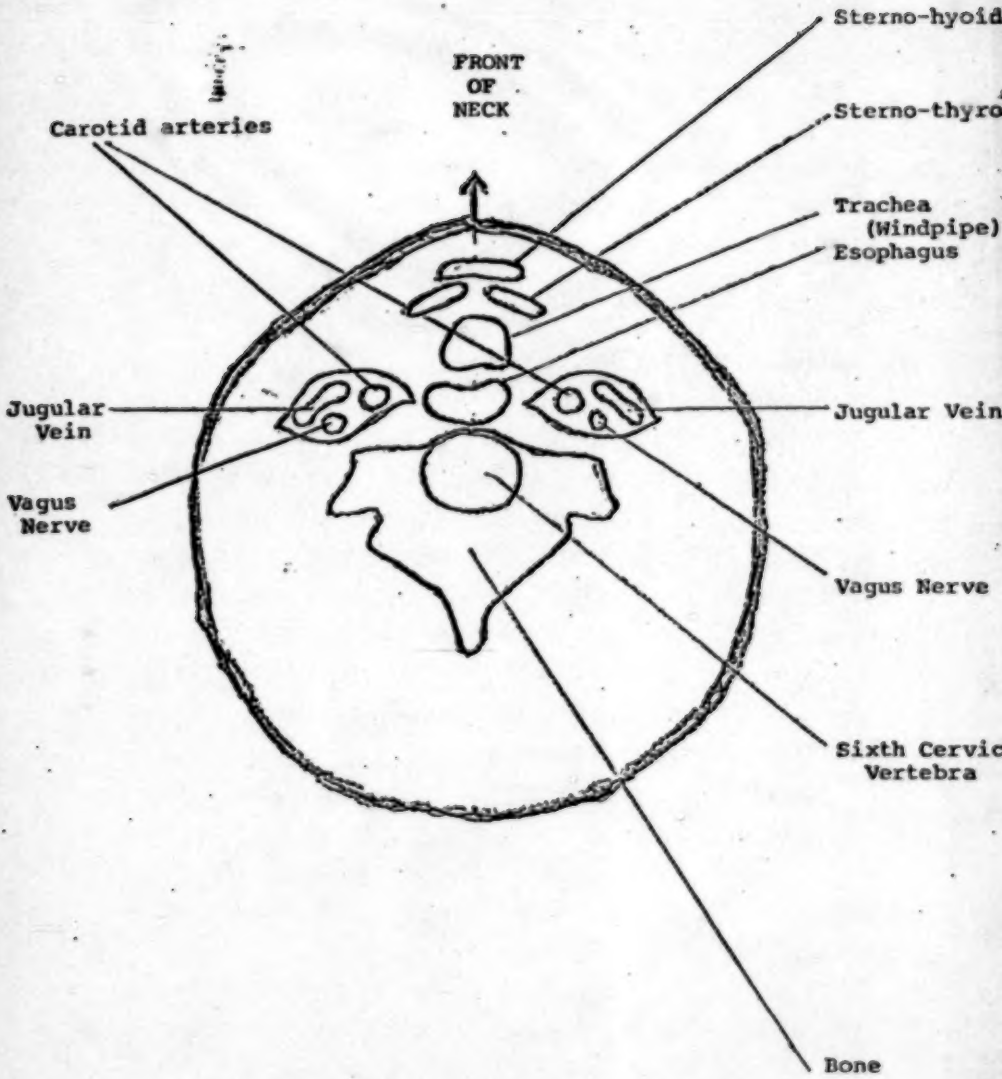


EXHIBIT B

**Declaration of Bruce Tegner.**
**July 21, 1980 [Exhibit 35]**

United States District Court, Central District of California.

(Title Omitted in Printing).

CASE NO. 77-0420-RMT.

State of California County of Ventura — SS.

I, the undersigned, hereby depose and say:

1. My name is Bruce Tegner; my business address is P. O. Box 1782, Ventura, CA. I was born in Chicago, Illinois in 1929. I am not acquainted with and have never met any of the parties to this lawsuit. If called to testify, I would competently and truly testify as set forth in this declaration.

2. Both of my parents were professional instructors of judo and jujitsu. They owned, operated and taught at professional martial arts schools in New York, New Jersey, Illinois and California. My formal instruction in judo and jujitsu began when I was two years old and was intensive and continuous thereafter. At ten years of age I began instructing professionally in judo and jujitsu and have continuously been engaged in the profession of instructor in the martial arts from that time to this date. I have also been trained in savate, in several styles of karate and in aikido. At age 17, I became the youngest U.S. citizen to receive a 2nd Degree Black Belt in judo. I hold a 5th Degree Black Belt in karate. In 1949 at age 21, I won the California State Judo Championship. I served in the United States Army as an instructor in unarmed combat and bayonet techniques for combat military and civil military police and for infantrymen; I also coached Army sports judo teams. I hold a Bachelor's degree in history from Laverne College in Laverne, California.

3. I have authored more than 25 books in the area of martial arts, including Bantam paperback editions (whose sales have totaled more than three million copies) as follows:

A. *Bruce Tegner's Complete Book of Jujitsu;*
B. *Bruce Tegner's Complete Book of Judo;*
C. *Bruce Tegner's Complete Book of Self-Defense;*
D. *Bruce Tegner's Complete Book of Aikido and Locks and Holds;*
E. *Self-Defense for Boys and Men;*
F. *Bruce Tegner's Complete Book of Jukado;*
G. *Bruce Tegner's Complete Book of Karate;*
H. *Self-Defense and Assault Prevention for Girls and Women;*
I. *Kung Fu and Tai Chi.*

I have also written, published and sold, since 1972, more than 15,000 copies of my book *Defense Tactics for Law Enforcement, Weaponless Defense and Control.* A revised edition titled: *Defense Tactics for Law Enforcement: Weaponless Defense & Control & Baton Techniques*, is in print and is used as a text for military police training programs.

4. I owned, operated and taught at the Bruce Tegner School of Self-Defense in Hollywood, CA, for 15 years from 1952 to 1967. The courses I taught were self-defense, judo and karate. At least 20,000 students passed through my school in that 15 year period.

5. From 1971 to 1977, I taught a course in defense tactics for law enforcement at Moorpark College in Ventura, CA. At that college, I presently teach Backpacking and Survival. From 1975 until this date, I have been teaching judo and self-defense, and Fundamental of Survival Courses at Ventura College and a three-part seminar: Survival (natural disasters and urban emergencies) for U.C.S.B. Extension.

6. I have been trained and certified in and have taught courses in cardio-pulmonary resuscitation. I am certified as an instructor by the American National Red Cross.

7. I am an expert in judo, karate, and techniques of self-defense. Based upon that expertise, in my opinion, forceful pressure to the neck can be dangerous, and choking force against the windpipe involves a high risk of fatality. A choke hold applied against the front of the neck is very difficult to apply with controlled force. It is my understanding that the resuscitory techniques which I have been trained in and have taught are not effective to revive or save the life of a person whose windpipe has been obstructed by anatomic fractures.

8. During my career as an instructor in the armed force, I taught numerous courses in combat killing and other techniques. One such technique, simply described, was to stand behind the enemy and to apply forceful pressure with the forearm to the front of the throat of the victim. It is my opinion as an expert in the martial arts that pressure should not be applied to the windpipe unless death is the desired result and that the "Bar Arm Control Hold" described in the Los Angeles Police Department Training Bulletin dated May, 1978, Volume X, Issue 13, attached hereto, which I have read and considered, constitutes the use of deadly force and involves a high degree of risk of fatality.

I declare under penalty of perjury that the above is true and correct and that this declaration was executed on the 21 day of July, 1980, at Ventura, CA.

/s/ Bruce Tegner
BRUCE TEGNER

**Excerpts From the Deposition of Thrift Hanks, M.D. August 27, 1980 (Exhibit 73).**

* * *

(Page 18, lines 2-4; 21-28):

Q: You joined or became the Medical Director in 1970?

A: I can remember that it was November of 1972.

* * *

Q: In your affidavit you indicate that as Medical Director you were informed whenever a death or critical injury occurred among arrestees or prisoners.

A: Yes.

Q: Had you given instructions to any person that whenever a death or critical injury occurred, you were supposed to be informed?

A: Yes.

* * *

(Page 29, lines 2-16; 26-28):

Q: Did you have access to autopsy reports if you requested them?

A: When I became associated with the jail medical problem, I went over. I discussed the matter of getting autopsy reports with Noguchi and also two of his deputy medical coroners there, and we all promised to cooperate and had done so very well.

The reason, I might say, that the reason I did that was that at the time that I first went there I began to see a few cadets coming down from the academy with problems that I associated with neck constraints, although I didn't know very much about them. I went up to the academy. I watched the training. I saw what was happening, and I advised them at that time that they were dealing with a potentially dangerous application of force in the use of a bar-arm.

* * *

Q: When was that, Doctor?

A: This was early in, oh, I would say, 1973, not long after I had become associated with the City.

* * *

(Page 34, lines 26-28; page 35, lines 1-7, lines 15-25):

Q: Do you wish you had been informed of the circumstances?

A: Well, it would have been most helpful to me at the time. As I recall, reading the autopsies, however, I would certainly have to agree that the neck trauma was indeed the cause of death. I would like to have been aware of this, although at that time I was bringing out to the Police Department the fact that while I felt that the carotid hold was preferable and stating that the bar-arm should not be applied, I cannot say what would happen in these individual circumstances.

* * *

Q: Dr. Hanks, do you have any understanding of what the term deadly force means?

A: Well, I would think that it would apply to any force that could in reasonable probability result in death.

Q: Given that definition, is it your medical opinion that the bar-arm control constitutes the use of deadly force?

A: It can in certain circumstances, but it depends upon how it's applied and the circumstances in which the arrestees finds himself physically, psychologically, and so forth.

* * *

(Page 39, lines 1-28, page 40, lines 1-11, 15-20):

Q: Doctor, we have recited since 1975 ten different people who have died, and I'm not going to make the conclusion that it was a result of, but have died at least in

connection with or after application of neck restraint holds — the court calls them strangle holds — by Los Angeles police officers, and you have indicated to me that you were aware of perhaps only one of those, and even then you weren't aware that a neck restraint was used; is that correct?

A: Yes.

Q: You indicated that you went over to the Police Academy and observed demonstrations of and discussed with officers application of the bar-arm and carotid holds, and you yourself applied them, and they were applied to you. On how many different occasions have you applied a bar-arm control?

A: You mean in demonstration, in that sort of thing, or actual application?

Q: Actual application in the law.

A: Unless I accidentally did it in wrestling, I have never applied it. In other words, other than in the demonstration and my own demonstration of what would happen in two different kinds of holds to the police officers on another individual, I have not applied it.

I did apply it in those circumstances without excessive force in order to show generally what can happen with the different types of holds, and I discussed the potential pathology with the bar-arm as opposed to the carotid hold. In so doing I reported also on the findings in the cadets that we were seeing on occasion down at the central receiving clinic that led me to believe that this was a hazardous — that the bar-arm was a hazardous hold.

Q: What kind of injuries were you seeing in those cadets?

A: We were seeing evidence of compression of the trachea and minor damage to the larynx. One of the cases that I examined who had become quite hoarse, had small reticial

bleeding, little pinpoint bleeding, in a small area in his larynx (looking at it from the inside). He also had bloodshot eyes and obviously had had considerable compression of the anterior structure of the neck.

* * *

Q: Have you ever had occasion where you had a spinal injury to a cadet or instructor out there?

A: No.

Q: None that you have been made aware of?

A: No. I think that one way or another I would have been made aware of those.

* * *

(Page 45, lines 26-28; page 46, lines 1-28; page 47, lines 1-5):

Q: In training we have already talked about the training of cadets, and you have talked about some of the injuries that you have noted with respect to that. In here you say that it's resulted in sore throats and hoarseness in a cadet. You indicated in your testimony that you also noted some bleeding in the larynx, some small speckled bleeding, bloodshot eyes. Have you come across any other injuries from cadets?

A: All of the rest of them that I looked at, and there must have been, oh, five or six at that point, I satisfied myself that this bar-arm itself was something that should be avoided in training and application.

Q: Did you tell the Police Department that?

A: I told them up at the academy that they should be very, very careful in application of the bar-arm because it was a potentially hazardous control.

Q: Did you tell them it was potentially deadly or did you know that at the time?

A: I told them that if carried to the ultimate and maintained there, it could result in death. I used the term, I think. as I recall I stated that under the circumstances of combat or even the excitement of the training program up there, particularly if you had a big two-hundred-fifteen-pound, six-foot-three fellow and a five-foot-five, one-hundred-forty-pounder, that the application of the bar-arm could result in laryngeal spasm, and there could be a fracture of the larynx and potential death. I think I should have used the words there could be a fatality, but that is long ago, and —

Q: At that time you weren't aware of any of these ten cases where we do have deaths in connection with that?

A: That was before that.

Q: Would your advice, knowing what you know now about this, be different to them that it was then?

A: No. I still felt that the bar-arm was a hold that was not only threatening to cadets but to anybody else.

* * *

(Page 49, lines 9-27):

Q: Can the bar-arm be hazardous even though it's applied for merely a few seconds, less than, say, five seconds?

A: Yes.

Q: Can it result in death?

A: I think so.

Q: Even it it's applied less than five seconds?

A: Yes, because if it's applied with very great force, and the larynx, that is, the cartilage, is damaged, and particularly if that is damaged and there is bleeding, fracture, swelling or whatever, that creates this laryngeal spasm which cannot be relieved. Then presumably also if there was severe hemorrhage that occlusion occurred, but doesn't

appear in that autopsy report, then the sudden severe application, just a sort of a blow, can cause death.

I understand in reading some older books on the use of martial arts that, indeed, for purposes of killing a person a blow with the side of the hand into the trachea or the larynx is sufficient to cause death. That would be a very quick fraction of a second.

* * *

(Page 88, lines 10-22):

BY MR. MITCHELL:

Q. Do you know from your experience and background and expertise what happens to the body of a person who is strangled unconscious with the bar-arm control, carotid artery control?

A: I don't know that anything would happen except at the time, as I say, within a very short time if the venous outflow is blocked, within, as I say — in the normal range I would say of a quarter of a minute that the person would become flaccid because he is unconscious. He could not move.

Q: Before he became unconscious isn't it likely that a violent struggle might ensue?

A: Very definitely.

* * *

**Excerpts From the Deposition of Terry Clark Speer. October 14, 1980 (Exhibit 70).**

* * *

(Page 18, lines 4-10):

Q: Now when you use the word "suspect" here, do you have a specific suspect in mind, someone who is suspected of a particular kind of crime, a felony or misdemeanor?

A: No.

Q: You do not distinguish between those two in your teaching?

Q: No.

* * *

(Page 26, lines 13-15, 21-25):

Q: Do you have any idea how many deaths have resulted after application of a neck restraint hold in the City of Los Angeles in the last five years?

* * *

THE WITNESS: No.

BY MR. MITCHELL:

Q: Does that interest you at all?

A: Well, I — I haven't really given it much thought.

* * *

(Page 28, lines 1-8, 17-28):

Q: Is there any procedure in the Los Angeles Police Department for reporting to the Training Academy deaths that occur as a result of police involvement?

A: My understanding is that the legal factors involved are of the nature that prohibits it.

Q: Is it your understanding that those matters are maintained confidential for legal purposes?

A: Yes.

* * *

Q: As a training officer at the Academy, would you prefer, if there were no legal implications to it, to be advised of those kinds of situations where deaths had occurred?

A: Well, obviously, the circumstances relative to the death, leading up to it, what was involved, sure, it would be helpful.

Q: Do you know whether you have access to officer-involved shooting reports?

A: I don't have access to officer-involved shooting reports.

Q: Have you ever asked for one?

A: Yes.

* * *

(Page 31, lines 1-8):

BY MR. MITCHELL:

Q: Were they Homicide reports?

A: No. There was — it was an altercation report that just came through the office. That's all.

Q: And you believe you read some of those where death has ensued thereafter?

A: Not where death ensued. I don't recall reading reports where death ensued.

* * *

(Page 39, lines 22-28):

Q: Do you know whether the L.A. Police Department provides each of its officers with copies of each training bulletin it publishes?

A: Well, I think that, to my knowledge, the training bulletins are available. They're read at roll call and it's

available for the officers if they choose to pursue the information in the bulletin.

* * *

(Page 70, lines 1-28):

BY MR. MITCHELL:

Q: I said you indicate in your Declaration at Page Four, Line 12, "Our method of instruction is as follows," and then you elaborate on that.

Since when has that been your method of instruction?

A: Between February and May of '78.

Q: You indicate that the recruit officer is told that when and only when he is about to have a bodily attack made on his person, "he is to gain initial control with a modified carotid, sit the suspect down and follow the sit-down progress to a full carotid control hold."

Is that the policy of the L.A. Police Department?

A. Yes

Q. It is only when an officer is about to have a bodily attack made on his person?

A. Yes

Q. Do you teach the officers how to determine whether or not they are about to have a bodily attack made on their person?

A. Well, there's discussions about it but obviously it's in the mind of the officer. The officer has to be the one that, at a particular given point and time, feels that there's about to be a bodily attack made on him, and that can be comprised of many different things.

Q. It could be a slight shove?

A. A clenched fist.

* * *

(Page 94, lines 1-5, 11-16, 19-28):

EXAMINATION

BY MR. MITCHELL:

Q. Have you ever seen anyone actually rendered unconscious from the use of the bar-arm control?

A. Yes, I have.

* * *

Q. What led you to believe that these people were unconscious as a result of the bar-arm control?

A. Well, because their eyes were rolled back in their heads. They would sometimes jerk. In all cases they didn't respond to questions.

* * *

Q. The City's expert. Dr. Koiwai, from Philadelphia has testified under oath, as a purported expert in the martial arts and as a physician, that you cannot render anybody unconscious with the bar-arm control. Do you think he is wrong?

A. I'm sure — well, I don't know what his definition of unconsciousness is.

Q. What is yours?

A. Where the suspect is at a point where he is no longer responding in a direct thought-out pattern.

**Excerpts from the Deposition of Llewellis E. Ritter, from *Booker Ford v. City of Los Angeles* (C.D. Cal.; No. CV 76-2704(LEW), July 27, 1979 (Exhibit 42).**

(Page 6, lines 25-28; Page 27, line 1-23):

Q You have never seen such an order?

A I can't say I haven't. I do know when we do implement under a system like this which was in effect, when I came on the department, but then was stopped for a number of years, the normal training bulletin was stopped for a period of years. When it was restarted again I am not sure. I am just convinced in my mind, knowing how we do things, that there must have been an order that indicated that one copy should be made available to every officer on the department. *There has never been to my knowledge, however, any requirement that he read it, understand it or be tested on it so that we know that he is fully aware of all of its contents.**

Q As of November 1975 did the Los Angeles Police Department have any policy with respect to what officers should do to resuscitate an individual that they had rendered unconscious, using the bar arm control?

A I don't know if the two were linked. *I never remember any linkage between the two,** but there was training about how to resuscitate unconscious persons.

Q Is it your testimony that in connection with the bar arm control *there was no training that the officer should seek to resuscitate anyone he had rendered unconscious?**

A I don't recall any training to link the two, no. That doesn't mean there wasn't. I just have no recollection of it.

*[Printer's note: italicized material denotes underlining by hand.]

**Excerpts From the Deposition of Robert Lee Jarvis, October 16, 1980 (Exhibit 72).**

* * *

(Page 46, line 28; page 47, lines 1-23):

BY MR. MITCHELL:

Q: Okay. Now in your experience as a police officer, based on that experience would it be a fair statement that application of a neck restraint hold is most likely to result in struggle to flee or escape on the part of the person on whom it is applied?

A: Yes, it would. They would want to get away from the hold.

Q: And that is because, first of all, it is painful; is it not?

A: The modified carotid isn't painful. Again, there's no pain connected with it. It just shuts off the oxygen to the brain, and you start to get dizzy and you eventually pass out.

Q: Why, in your opinion, does the suspect seek to get away from it?

A: Well, he doesn't like to be controlled. He panics. He's in a panic situation.

Q: Why does he panic?

A: The possibility that something could happen to him if he's rendered unconscious or somebody's choking on the neck. I think all of us, even if a person is trained — I know I wouldn't want anyone to apply a neck restraint hold to my neck because of the possibility of a broken neck. These are things that everybody involved in training knows.

* * *

(Page 79, lines 2-4):

Q: So would you say that the bar-arm control is a hold that is used to inflict pain to obtain compliance?

A: Inflict pain to gain compliance, yes.

* * *

(Page 83, lines 2-21):

Q: You say in your Declaration that slamming the arm against the victim's neck is much more likely to cause injury. To what?

A: The trachea.

Q: And larynx?

A: The larynx, the voice box, and the hyoid bone.

Q: The larynx and the voice box are the same thing; are they not?

A: Yes.

Q: Would you also say that it is much more likely to cause death?

A: Than any other hold, yes, if that is crushed. That's all cartilage, though. If that's crushed, it chokes the suspect.

Q: When was the slamming of the arm against the victim's neck rejected by the L.A.P.D.?

A: Within the last five years but I'm not sure when.

Q: Do you know why it was rejected?

A: The possibility of injury to the throat.

* * *

(Page 85, lines 27-28):

Q: But you indicated the bar-arm control will not render anybody unconscious.

(Page 86, lines 1-3, 8-28; Page 87, lines 1-28)

A: No.

Q: If it will not render them unconscious, what does it render them?

* * *

THE WITNESS: Well, if it renders control, puts you under control by applying the pressure, you submit. You say, "I give up; I don't want any more," and I stop. And in our escalation and de-escalation and use of force, when the suspect de-escalates and says, "I give up," the officer does likewise and then he takes him into custody. I might talk to him verbally and say, "Okay; behave yourself," and put the handcuffs on or whatever.

Q: What if he doesn't give up?

A: Then I pursue until he does and I get him under control.

Q: Until he stops wiggling, until he stops moving and —

A: I don't stay in the bar-arm control. I go to the modified carotid.

Q: Suppose you can't.

A: You are allowed to use a bar-arm control if the carotid control doesn't work.

Q: Do you continue to apply the bar-arm control for so long as the suspect is moving and has not given up?

A: Yes, I would. Yes.

Q: Now you have indicated that when a person goes unconscious, he jerks and moves around.

A: Yes.

Q: So he is moving.

A: Yes.

Q: So you would continue applying the hold then?

A: Until he — no. Then at that time I would stop because I know what it feels like. The officer is taught what a suspect — when he goes limp and he has the spasmodic conditions, he knows how many seconds he can possibly

keep that hold on before the suspect would possibly die, and that's four minutes. After four minutes the suspect, without oxygen, dies.

Q: Well, you have told me that the bar-arm control will not deprive him of oxygen.

A: No. I could crush him and choke him to death, yes.

Q: And that could happen in two seconds; could it not?

A: Sure, it could.

Q: Do you teach them at the Academy that the bar-arm control can result in death even if it is applied for just two seconds?

A: No. I don't believe so.

Q: Is that anywhere in a bulletin?

A: No.

Q: Why not?

A: I don't know. I can't answer that honestly.

* * *

**Excerpts From the Deposition of Raymond Sua October 2, 1980 (Exhibit 71).**

* * *

Page 23, lines 22-28; page 24, lines 1-28; page 25, lines 1-6:

Q. Would you list for me the pain-compliance holds that are being taught at the academy today?

A: We have two: a wristlock and twistlock.

Q: Are those two holds designed specifically to cause pain and to gain compliance by that pain?

A: Yes.

Q: Is the bar-arm control a pain-compliance hold?

A: No, it's not.

Q: This training bulletin which we have marked as Exhibit 3, is this the training bulletin which is in effect today with respect to the use of control holds, the one dated May 1978, and it circulates in the Police Department as of today.

A: A training bulletin?

Q: Directing your attention to Plaintiff's 3, at the fifth page where photograph 13 appears, I have underlined a sentence down there with black ink. Would you read that sentence into the record?

MR. UNGER: Is this Exhibit 3? You have underlined Exhibit 3; is that correct?

BY MR. MITCHELL:

Q: Would you read the sentence there that I underlined?

A: "Recent experience has shown that suspects under the influence of certain drugs are oblivious to pain-compliance holds such as the bar-arm."

Q: So that training bulletin is stating that the bar-arm control is a pain-compliance hold: is that correct?

MR. UNGER: I am going to object because it's taken out of the context of the entire section, but you may answer it.

THE WITNESS: Like I mentioned before, there is pain involved, sure, there is, in the bar-arm.

BY MR. MITCHELL:

Q: Is it a pain-compliance hold?

A: No, it's not. In our use of force — we have a use of force policy, and as far as where that lies, pain-compliance, that is not considered a control hold. Pain-compliance is two different things.

* * *

Page 25, lines 12-26:

Q: But doesn't that sentence that I underlined here in the training bulletin indicate that at least whoever wrote that training bulletin believes that the bar-arm control was one of the pain-compliance holds?

MR. UNGER: Objection. The sentence speaks for itself, whatever is in there. It's speculation as to what he thinks someone else is interpreting.

You can give your own interpretation, if you have one.

THE WITNESS: Well, about the only thing I can say is that if someone were to say, you know, like you mentioned, if that's a pain-compliance hold, I would say no.

Q: That is not a pain-compliance hold?

A: It is an unconscious-rendering hold, but there is pain involved in the bar-arm, sure there is.

* * *

Page 68, lines 1-28; page 69, lines 1-12, 17-28; page 70, lines 1-26:

Q: That could be giving up; could it not?

A: It was fully unconscious as far as I'm concerned. I am not a doctor. I couldn't tell for sure.

Q: The five instances where you applied it in the field, how many times did you render someone unconscious?

A: Twice out of the five times.

Q: Was this the two instances that you have described, or was it two different instances?

A: Two different.

Q: So that was during your tenure in 1975-1976?

A: Yes, sir.

Q: The first instance that you rendered someone unconscious, what led you to believe that that first person was unconscious?

A: As I said before, the body from head to toe just goes limp on you. No movement at all. That's basically it.

Q: How long did you apply the bar-arm before the body went limp?

A: I think it was a little over a minute.

Q: Were there any movements in the suspect's body prior to the limpness occurring?

A: Fighting, struggling.

Q: Describe the movements.

A: Limpness. I had the individual down on the ground and his feet were kicking up and down and his hands were moving towards my face, trying to grab for my hair and trying to grab for my face, nose, and that's when I rendered him unconscious.

Q: Was the body wriggling?

A: Yes, it was.

Q: After the limpness occurred, how long was it before you observed movement in the suspect's body?

A: Around ten seconds, I believe.

Q: Did you look at the suspect's eyes during that ten-second period?

A: No I didn't.

Q: Other than cessation of movement did you have any other reason to believe that the person was unconscious?

A: His body going limp.

* * *

BY MR. MITCHELL:

Q: The second person that you applied the bar-arm to that went unconsious, how long did you apply the bar-arm before unconsciousness resulted?

A: Roughly about the same time, a little over a minute, I'd say.

Q: Was it the same sort of body movements that occurred prior to unconsciousness?

A: Struggling and fighting, sure.

Q: Legs kicking and arms moving about wildly?

A: Yes.

Q: What lead you to believe that unconsciousness had occurred?

A: The same as the first, body went limp, no movement. That's it.

Q: Could that as easily have been submission as it could have been unconsciousness?

MR. UNGER: You mean giving up by submission?

MR. MITCHELL: Yes.

THE WITNESS: It could have been.

BY MR. MITCHELL:

Q: And it could have been in the first instance as well, correct?

A: Sure.

Q: In the second suspect you rendered unconscious did you observe the suspect's eyes prior to him moving again?

A: No, sir.

Q: One of the experts for the city in the case has indicated that with respect to the bar-arm control you cannot render a person unconscious. Do you have any reason to believe that that expert is mistaken? You cannot render an individual unconscious with a naked forearm across the front of the throat?

A: Well, I'm not a doctor, but I don't know what he was doing for that ten seconds when he was lying there other than in my opinion on the fact that he was unconscious.

Q: And that's limited to those two instances; is that correct?

A: Yes.

**Excerpts From the Deposition of Takayuki Kubota September 4, 1980 (Exhibit 67).**

* * *

Page 14, lines 3-24:

BY MR. MITCHELL:

Q: Do you have any knowledge of the anatomy of the human neck?

A: I don't know the details about the neck, but I know to the extent that the way it's used in karate or sports as to what extent to be used or punishment to be taken so the opponents will give in. To that extent I know.

Q: Can you name for me any of the organs of the neck?

A: What we use in karate is this bone right here.

MR. MITCHELL: Indicating the front portion of the neck under the chin.

THE WITNESS: I don't know. The inside. The fact that if you push too far, death could occur, so one must instruct to that danger at all times.

BY MR. MITCHELL:

Q: Can you point out for me which portion of the neck you have reference to?

A: Right here. It's called the cartilage, not to choke this.

MR. MITCHELL: Indicating for the record right beneath the chin and above the Adam's Apple.

* * *

Page 51, lines 12-28:

Q: In your declaration, Mr. Kubota, you say, "The bar-arm control is a more dangerous hold." Why do you say that?

A: Because the one strikes and does this. It's the technique. One cannot move against, so that's — for that reason it is a very dangerous technique.

Q: Is it very dangerous that it can severely injure the structures in the neck?

A: I believe it is interior damage to the neck.

Q: Of the neck?

A: Yes.

Q: In your declaration you say the chances of serious injury are much more likely using a bar-arm control. Why do you say that?

A: Because the arm goes into the throat area. For that reason I think maybe there is a greater danger.

* * *

Page 59, lines 10-27:

Q: Is it a fair statement that otherwise than at sports competition pressure should not be applied to the windpipe unless death is the desired result?

A: That I agree with. The reason being — just to raise it up or just to hold it right there? Which one is it?

Q: I don't know.

A: Unless that is clarified, I wouldn't know.

Q: The question was, and if you can answer then so state: Is it a fair statement what with the exception of sports competition pressure should not be applied to the windpipe unless death is the desired result?

A: I know, but at this time I don't know — I don't want to answer not knowing all the things involved, since because I control it, just apply it just lightly and just release right

away. Just a light pain to the extent, but then at the club, I would practice just a little bit by little bit and then they say "Oh, it hurts," and then I let go and that's it.

**Selected Requests for Admissions**

**(Exhibit 27).**

* * *

*Request No. 158:*

That one or more Los Angeles Police Officers applied a bar-arm control or carotid artery control on Robert Cameron on or about December 20, 1979, and that Robert Cameron died on January 7, 1980.

*Response No. 158:*

The Defendants admit that one or more police officers *attempted* to apply bar-arm or carotid artery control hold on Robert Cameron on or about December 20, 1979, and that Robert Cameron died on or about January 7, 1980.

*Request No. 159:*

That no Los Angeles Police Officer intended to apply deadly force against Robert Cameron on or about December 20, 1979.

*Response No. 159:*

The Defendants admit that no Los Angeles Police Officer intended *or did apply* deadly force against Robert Cameron on or about December 20, 1979.

*Request No. 160:*

That no Los Angeles Police Officer intended to kill Robert Cameron on December 20, 1979.

*Response No. 160:*

Defendants admit that no Los Angeles Police Officer intended to *or did kill* Robert Cameron on or about December 20, 1979.

*Request No. 161:*

That one or more Los Angeles Police Officers applied a bar-arm control or carotid artery control hold on David

Randall Adkins on or about July 24, 1978, and that David Randall Adkins died on or about July 24, 1978.

*Response No. 161:*

The Defendants admit that one or more police officers applied a bar-arm control or carotid artery control on David Randall Adkins on or about July 24, 1978, and that David Randall Adkins died on or about July 24, 1978.

*Request No. 162:*

That no Los Angeles Police Officer intended to apply deadly force against David Randall Adkins on or about July 24, 1978.

*Response No. 162:*

The Defendants admit that no Los Angeles Police Officer intended *or did apply* deadly force against David Randall Adkins on or about July 24, 1978.

*Request No. 163:*

That no Los Angeles Police Officer intended to kill David Randall Adkins on or about July 24, 1978.

*Response No. 163:*

The Defendants admit that no Los Angeles Police Officer intended to *or did kill* David Randall Adkins on or about July 24, 1978.

* * *

*Request No. 170:*

That one or more Los Angeles Police Officers applied a bar-arm control or carotid artery control on Edward Daily on or about October 6, 1976, and that Edward Daily died on or about October 6, 1976.

*Response No. 170:*

The Defendants admit that one or more Los Angeles Police Officers applied a bar-arm control or carotid artery

control on Edward Daily on or about October 6, 1976, and that Edward Daily died on or about October 6, 1976.

*Request No. 171:*

That no Los Angeles Police Officer intended to apply deadly force against Edward Daily on or about October 6, 1976.

*Response No. 171:*

The Defendants admit that no Los Angeles Police Officer intended to *or did apply deadly force* against Edward Daily on or about October 6, 1976.

*Request No. 172:*

That no Los Angeles Police Officer intended to kill Edward Daily on or about October 6, 1976.

*Response No. 172:*

The Defendants admit that no Los Angeles Police Officer intended to *or did kill* Edward Daily on or about October 6, 1976.

*Request No. 173:*

That one or more Los Angeles Police Officers applied a bar-arm control or carotid artery control on Frank Fairbanks on or about August 10, 1975, and that Frank Fairbanks died on or about August 10, 1975.

*Response No. 173:*

The Defendants admit that one or more Los Angeles Police Officers *attempted to apply* a bar-arm control or carotid-artery control on Frank Fairbanks on or about August 10, 1975, and that Frank Fairbanks died on or about August 10, 1975.

*Request No. 174:*

That no Los Angeles Police Officer intended to apply deadly force against Frank Fairbanks on or about August 10, 1975.

*Response No. 174:*

The Defendants admit that no Los Angeles Police Officer intended to *or did apply* deadly force against Frank Fairbanks on or about August 10, 1975.

*Request No. 175:*

That no Los Angeles Police Officer intended to kill Frank Fairbanks on or about August 10, 1975.,

*Response No. 175:*

The Defendants admit that no Los Angeles Police Officer intended to kill *or did kill* Frank Fairbanks on or about August 10, 1975.

*Request No. 176:*

That one or more Los Angeles Police Officers applied a bar-arm control or carotid artery control on Booker T. Ford, Jr., on or about November, 1975, and that Booker T. Ford, Jr., died on or about November 4, 1975.

*Response No. 176:*

The Defendants admit that one or more Los Angeles Police Officers applied a bar-arm control or carotid artery control on Booker T. Ford, Jr., [on] or about November 4, 1975, and that Booker T. Ford, Jr., ded on or about November 4, 1975.

*Request No. 177:*

That no Los Angeles Police Officer intended to apply deadly force against Booker T. Ford, Jr., on or about November 4, 1975.

*Response No. 177:*

The Defendants admit that no Los Angeles Police Officer intended to *or did apply* deadly force against Booker T. Ford, Jr., on or about November 4, 1975.

*Request No. 178:*

That no Los Angeles Police Office intended to kill Booker T. Ford, Jr., on or about November 4, 1975.

*Response No. 178:*

The Defendants admit that no Los Angeles Police Officer intended *or did kill* Booker T. Ford, Jr., on or about November 4, 1975.

*Request No. 179:*

That one or more Los Angeles Police Officers applied a bar-arm control or carotid artery control on Carl Michael Middleton on or about May 27, 1975, and that Carl Michael Middleton died on or about May 27, 1975.

*Response No. 179:*

The Defendants admit that one or more Los Angeles Police Officers applied a bar-arm control or carotid artery control on Carl Michael Middleton on or about May 27, 1975, and that Carl Michael Middleton died on or about May 27, 1975.

*Request No. 180:*

That no Los Angeles Police Officer intended to apply deadly force on Carl Michael Middleton on or about May 27, 1975.

*Response No. 180:*

The Defendants admit that no Los Angeles Police Officer intended to *or did apply* deadly force on Carl Michael Middleton on or about May 27, 1975.

*Request No. 181:*

That no Los Angeles Police Officer intended to kill Carl Michael Middleton on or about May 27, 1975.

*Response No. 181:*

The Defendants admit that no Los Angeles Police Officer intended to *or did kill* Carl Michael Middleton on or about May 27, 1975.

* * *

*Request No. 185:*

That one or more Los Angeles Police Officers applied a bar-arm control or carotid artery control on Alvin Whitehead on or about February 1, 1978, and that Alvin Whitehead died on or about February 1, 1978.

*Response No. 185:*

The Defendants admit that one or more Los Angeles Police Officers applied a bar-arm control or carotid artery control on Alvin Whitehead on or about February 1, 1978, and that Alvin Whitehead died on or about February 1, 1978.

*Request No. 186:*

That no Los Angeles Police Officer intended to apply deadly force against Alvin Whitehead on or about February 1, 1978.

*Response No. 186:*

The Defendants admit that no Los Angeles Police Officer intended to *or did apply* deadly force against Alvin Whitehead on or about February 1, 1978.

*Request No. 187:*

That no Los Angeles Police Officer intended to kill Alvin Whitehead on or about February 1, 1978.

*Respondent [sic] No. 187:*

The Defendants admit that no Los Angeles Police Officer intended to *or did kill* Alvin Whitehead on or about February 1, 1978.

*Request No. 188:*

That one or more Los Angeles Police Officer applied a bar-arm control or carotid artery control on James Wright on or about March 7, 1980, and that James Wright died on or about March 7, 1980.

*Response No. 188:*

The Los Angeles Police Department's investigtion [*sic*] into the death of James Wright is still being investigated by said police department. As soon as the investigation is completed the Defendants shall provide a response to Request No. 188.

*Request No. 189:*

That no Los Angeles Police Officer intended to apply deadly force against James Wright on or about March 7, 1980.

*Response No. 189:*

See Response to No. 188.

*Request No. 190:*

That no Los Angeles Police Officer intended to kill James Wright on or about March 7, 1980.

*Response No. 190:*

See Response to No. 188.

* * *

*Request No. 255:*

That since January 1, 1975, approximately ten persons have died shortly after having been subjected to application

or attempted application of a bar-arm control or carotid artery control by an officer or employee of the City of Los Angeles.

*Response to Request No. 255:*

The Defendants admit that since January 1, 1975, approximately ten persons have died shortly after having been subjected to application or attempted application of a bar-arm control or carotid artery control by an officer or employee of the City of Los Angeles. However, the Defendants deny, that approximately ten persons, or any persons, have died *as the result* of the application of a bar-arm control or carotid artery control by an officer or employee of the City of Los Angeles.

**Los Angeles Police Department Report on the Death of Carl Middleton (Exhibit 3).**

OPERATIONS HEADQUARTERS BUREAU
REPORT OF LAW ENFORCEMENT ACTIVITY DEATH*

The City Attorney of Los Angeles considers this report as highly confidential and a privileged communication between the involved officers and their attorney. Administrative use is limited to concerned staff and command personnel of the Los Angeles Police Department. Any other use is forbidden by the City Attorney.

This report has a registered distribution. Please return the report to Robbery-Homicide Division as soon as practicable. Robbery-Homicide Division is responsible for maintaining a record of outstanding reports. The return of this copy of the report will be recorded.

THIS REPORT IS *NOT* TO BE REPRODUCED OR COPIED

*CONFIDENTIAL*

Robbery-Homicide Division Report of Law Enforcement Activity Death: DR 75-544 953 (ACCIDENTAL), 415 P.C. SUSPECT, MIDDLETON, Carl M. (DECEASED), Male Negro, 25.

Involved Officers: A. W. RICHARDSON, 20878, 12A23; R. K. COCHRAN, 20608, 12A97; K. R. HAIGHT, 20205, 12L520; R. L. HUNTER, 17828, 3T93.

Date and Time of Occurrence: May 27, 1975, 0420 hours.

Location of Occurrence: 729 West Manchester Avenue.

Area of Occurrence: 77th Street Area, R/D 1235.

R.H.D. Investigating Officers: INV. III D. R. HAM, 5621; INV. II J. P. St.JOHN, 2698.

*PRINTER'S NOTE: the words "Do Not Copy" appear across each page of the original document.

CONFIDENTIAL

*THIS REPORT IS FOR THE CONFIDENTIAL USE OF THE CITY ATTORNEY.*

To: BURT PINES, CITY ATTORNEY

Sir:

*CHRONOLOGICAL NARRATIVE*

On Tuesday, May 27, 1975, at approximately 0345 hours, a 6-foot, 5-inch, 245-pound male Negro, subsequently identified as Carl M. Middleton, entered Norm's Restaurant, located at 8511 South Figueroa Street, Los Angeles. Middleton was attired in a black shirt, black trousers and black shoes. A black silk T-shirt was wrapped around his head, covering his eyes and mouth.

Mr. John R. Block was behind the cash register of the restaurant at the time Middleton entered. Block is employed by the restaurant as a security guard, and at the time was wearing a blue, guard's uniform. He carried a .38-caliber Smith and Wesson revolver in a holster at his right side attached to a Sam Browne belt.

Norm's Restaurant is located on the west side of Figueroa Street. The entrance is located in the approximate southeast corner of the building. The cash register is situated approximately 6 feet northwest of the entrance. Mr. Block, upon observing Middleton enter, formed the opinion that the suspect was going to attempt a robbery, based upon the fact that Middleton's face was concealed. Middleton held his arms upward. His hands were secreted from view as they were inside the black T-shirt in the area of his cheeks.

Middleton walked in a westerly direction toward the cash register area and Block. Block told him, "Get out of here. I don't want you in here." As he spoke, Block placed his right hand on the handle of his revolver. Middleton stated something which was unintelligible. Block again ordered

Middleton from the restaurant. Middleton removed his right hand from behind the cloth mask and stretched his arm outward. Block noted that there was nothing in Middleton's hand.

For the third time, Block ordered Middleton from the restaurant. Middleton again said something unintelligible. He made a 180-degree turn to his right and exited the restaurant without further incident.

Carl Middleton stood on the sidewalk approximately 5 feet east of the restaurant entrance and removed the silk T-shirt from around his head. He grabbed the shirt with both hands, placed it around his neck and held it in a choking manner. After a few seconds, Middleton removed the shirt from around his neck. He walked east onto Figueroa Street and stopped in the approximate east-west center of the roadway. Several north and southbound vehicles were forced to apply their brakes in order to avoid striking Middleton who was moving from side to side in the street, holding the T-shirt in his outstretched hands in front of his body.

Mr. Black [*sic*] walked to the rear of the restaurant intending to notify the Los Angeles Police Department of the strange behavior of Middleton. As he was dialing the phone, he looked out through a window in the door to the rear portion of the restaurant and observed Middleton reenter the restaurant. Block walked to the front of the restaurant and again ordered Middleton out. Middleton complied with the order and exited the restaurant.

Upon reaching the sidewalk, Middleton held the T-shirt in his hands, his arms outstretched. He pirouetted several times, then stopped and moved from side to side. He continued these actions for several minutes. He next dropped his hands to his side, holding the black shirt in his right hand. He walked south to the west side of Figueroa to

Manchester, turned right and walked west on the north sidewalk of Manchester, disappearing from Block's view. Block returned to the restaurant and called the Los Angeles Police Department Communications Division. Operator 48 received the call at 0410 hours.

Block advised Operator 48 that there was a man on crutches blocking traffic on Figueroa Street in front of 8511 South Figueroa. (NOTE: Block acknowledged that he notified Operator 48 that there was a man blocking traffic in the street in front of 8511 South Figueroa; however, he denied relating that the man was on "crutches." The communications tape revealed that Block did, in fact, advise communications that a man on crutches was blocking traffic on Figueroa Street in front of 8511. The tape was played for Mr. Block; however, he emphatically denied making the statement.)

At 0411 hours, Communications broadcast: "See the man, 415 man on crutches in roadway in front of Norm's Restaurant, 8511 South Figueroa. 12A23, Code 2." Unit 12A23, 77th Street Area, Team 1, uniformed Officers A. W. Richardson, 20878, the driver, and his partner, R. A. Smith, 14936, were southbound on Western Avenue at 80th Street when the broadcast was transmitted.

Unit 12A97, 77th Area, Team 5, uniformed Officers J. D. Hayden, 13383, driver, and his partner, R. K. Cochran, 20608, were southbound on Broadway at Manchester Avenue at the time the broadcast was transmitted. Hayden drove west on Manchester to Figueroa. He turned right and drove north. He turned left into the driveway on the south side of Norm's Restaurant. He parked the police car headed west, next to the restaurant. Hayden exited the police car, walked to the restaurant entrance and entered and met Mr. Block.

As Officer Hayden exited the police car, Officer Cochran broadcast: "12A97, cancel the call for 12A23. Show us handling the call at 8511 South Figueroa." Communications immediately cancelled the call for unit 12A23. Unit 12A23 acknowledged the cancellation at 0413 hours.

Mr. Block advised Officer Hayden that a male had been in the restaurant with a "black scarf" wrapped around his head. Hayden inquired whether or not the scarf covered his entire face. Block indicated that it had. Block advised Hayden that he had escorted the man outside and watched him walk south on Figueroa to Manchester, turn and walk west on the north sidewalk of Manchester where he disappeared from Block's view. Block indicated that the man had left approximately five minutes before the arrival of the officers.

Block further advised Hayden that the man was wearing dark clothing and was, "very big." Block indicated that when he first observed the man enter the restaurant it was his opinion that he was going to be robbed due to the fact that the suspect was concealing his face, and his hands were secreted behind the scarf which he wore around his face. Officer Hayden indicated to Block that they would attempt to locate the man.

Officer Hayden returned to the police car and backed out onto Figueroa. He drove south to Manchester where he turned right. Hayden drove slowly west on Manchester. Manchester Avenue between Figueroa and Hoover Street is well-lighted, illumination being furnished by overhead, sodium-vapor lights spaced 100 feet apart on both sides of the street. Shortly after turning onto Manchester, the officers observed a large male Negro answering the suspect's description walking west on the north sidewalk of Manchester. The suspect held a black T-shirt in his left hand. Hayden stopped and parked the police car headed west at the north

curb of Manchester approximately 5 feet east of the suspect who at the time was in front of 623 West Manchester.

As Officer Hayden was parking, Middleton turned his head to his left (south) and looked in the officers' direction. Officer Cochran exited the passenger's door of the police car. As he exited, he yelled to the suspect, "Where are you going?" There was no response. Middleton stopped, grasped the T-shirt with both hands, raised his arms upward and held the shirt approximately 1 foot in front of his face. He moved the upper portion of his body from side to side. His legs were motionless. Hayden exited the police car and joined his partner on the sidewalk in front of 623 West Manchester. The two officers walked west, abreast of one another, toward the suspect, who was at the time facing west.

Officer Cochran moved to a position approximately 4 feet to the rear of the suspect who was facing west. Officer Hayden moved to a position approximately 4 feet to the suspect's front. Middleton turned 90 degrees to his left (south) and observed Cochran. He lowered his arms, holding the T-shirt in his left hand. Middleton raised his forearms upward and held his hands approximately 1 foot in front of his face. He began moving the upper portion of his body from side to side in what the officers describe as a Kung Fu stance. His legs remained motionless.

While moving in the aforementioned manner, Middleton faced in a southeasterly direction. Officer Hayden was approximately 3 feet to the suspect's right, Cochran approximately 4 feet to the suspect's left. Cochran ordered Middleton to, "Give me the scarf." There was no verbal or physical response. Officer Cochran reached out with his left hand and grabbed the T-shirt. Middleton continued holding onto the shirt with his left hand and turned to his right.

Carl Middleton made two complete 360-degree turns. He stopped, facing south. As the suspect turned, Officer Cochran retained his hold on the T-shirt and also made two complete turns. As Middleton stopped, Cochran released his hold on the T-shirt. Middleton resumed the Kung Fu stance. At this point, Cochran stood approximately 4 feet to the suspect's left, facing in a northwesterly direction. Officer Hayden stood approximately 4 feet to the suspect's right, facing southeast.

Middleton reached into his right front trouser pocket with his right hand. Officer Hayden stepped forward and grabbed the suspect's right wrist with both of his hands. It was the officer's intention to move to the suspect's rear and place a bar-arm control hold on Middleton in order to subdue and handcuff him. However, Middleton rapidly raised his right arm upward and threw Hayden approximately 6 feet in a westerly direction. As he did this, Middleton dropped the T-shirt to the sidewalk in front of 623 West Manchester Avenue and ran south to the center of Manchester Avenue.

Unit 12L520, 77th Street area, Team 5, uniformed officers, Sergeant P. D. Hanf, 13844, and Officer K. R. Haight, 20205, were westbound on Manchester at Figueroa Street when they observed Middleton run south onto Manchester Avenue. Haight, the driver, drove west and passed Middleton in an attempt to prevent him from running west. Middleton ran to the south side of the street, turned and ran west past the driver's side of 12L520, which was stopped in the approximate center of Manchester Avenue. Officer Haight, upon observing the suspect running west past them, drove the vehicle to the north side of Manchester where he parked headed diagonally in a northwesterly direction.

Officer Cochran ran to his police car and broadcast: "12A97, request a back-up at 623 West Manchester." Communications received this broadcast at 0417 hours. Officer

Smith, upon hearing the transmission by Cochran requesting a back-up unit, broadcast to Communications: "12A23, we will handle the back-up at 623 West Manchester." As Cochran broadcast, his partner, Officer Hayden, ran south into the street in pursuit of Middleton. Sergeant Hanf exited his unit and joined Hayden running west on Manchester in pursuit of the suspect.

Uniformed Sergeant R. S. Gil, 14532, unit 12L330, 77th Street Area, Team 3, in response to the request for a back-up unit, was driving east on Manchester approaching Hoover when he observed Middleton running westbound in the street toward him. Gil activated his red lights. Middleton continued running west. Gil parked his police car headed east in the number one eastbound lane directly south of 729. Middleton stopped in the number one, eastbound lane approximately 15 feet east of the sergeant's vehicle. (NOTE: Middleton had run a distance of approximately 500 feet from 623 West Manchester to 729 West Manchester.)

Officer Cochran, upon concluding his broadcast, drove west on Manchester. He stopped the police car, headed west, in the number one eastbound lane. He was approximately 30 feet east of Sergeant Gil's vehicle. Middleton stood in the approximate east-west center between unit 12L330 and 12A97. The headlights of both vehicles were on and illuminated the suspect. Officer Haight drove his unit west and parked between the number one and number two eastbound lanes, headed west, approximately 30 feet east of Middleton. The headlights of his vehicle were on, also illuminating the suspect.

South Traffic Division, uniformed Officers R. L. Hunter, 17828, the driver of unit 3T93, and his partner, K. P. Hornick, 14299, were at Vermont and Manchester when they heard 12A97 request a back-up unit. Hunter drove east on Manchester to the area. Hunter parked his unit approx-

imately 6 feet south of Sergeant Gil's vehicle, headed east approximately 20 feet west of Middleton. Hunter and Hornick exited the police car. Hunter did not extinguish the lights on the police vehicle which also illuminated the suspect. (NOTE: Refer to diagram number 1 for vehicle positions.)

Middleton raised his arms upward over his head and moved the upper portion of his body from side to side in a swaying motion. He turned 180 degrees to his right and stopped, facing east. Officer Hayden ran west toward the suspect. As he approached Middleton, Hayden raised his right leg upward and kicked out, striking Middleton in the abdominal area. The kick had no apparent effect, as Middleton stood motionless. Officer Hayden bounced backward. Officer Hornick, who was directly behind Hayden, grabbed him to prevent Hayden from falling to the pavement. Officer Haight broadcast: "12L520, code 4, Hoover and Manchester, sufficient units." Communications acknowledged the broadcast and transmitted a code 4.

Subsequent to Officer Hayden kicking Middleton in the abdominal area, the suspect made a 180-degree turn to his left, stopped and faced west. Officer Hayden removed his baton from his baton ring with his right hand and struck Middleton twice on the right trapezius muscle (shoulder) from the rear. Again there was no apparent effect from the blows. Middleton turned to his right and stopped, facing to the east toward Officer Hayden.

Officer Hunter stood approximately 1 foot to Hayden's right. Hunter also removed his baton from the baton ring with his right hand and struck Middleton three times in the abdominal area with the butt of his baton. There was no apparent effect from the blows. Hunter next struck the suspect three times on his left shin with his baton. Again there was no apparent effect. Officer Hayden struck Middleton

three times on the right shin with his baton with no apparent effect.

As Officers Hayden and Hunter attempted to subdue Middleton, unit 12A23 arrived at the scene. Officer Richardson parked the vehicle headed east between lanes west 1 and 2, approximately 10 feet west of unit 12L330 and 3T93. Subsequent to Middleton being struck by Hunter and Hayden, Officers Hornick and Haight grabbed the suspect's left arm. Officer Cochran grabbed the suspect's right forearm and Sergeant Hanf grabbed the suspect's right arm.

Carl Middleton grabbed the upper portion of Officer Hayden's baton above the grommet with his right hand. Hayden continued holding onto his baton. Middleton rapidly moved his left arm to the left and upward, throwing Officers Hornick and Haight backward (west). Middleton released his hold on Hayden's baton and backed in a southerly direction. As he backed, he turned to his left, stopping at the south curb facing north.

Sergeant Hanf and Officer Cochran continued holding onto the suspect's right arm. Officer Haight again approached Middleton and grabbed his left arm. Officer Smith approached Middleton from the rear and attempted to place a bar-arm control hold on his neck. The suspect bent the upper portion of his body forward, and Officer Smith was thrown upward. Hayden reached up and grabbed the back of Smith's Sam Browne belt and pulled him down. Smith fell on Hayden and both officers fell to the pavement. Middleton stepped up onto the south curb of Manchester. At this point, the suspect was completely surrounded by 9 officers.

Officer Richardson approached Middleton from the front and placed his right hand on the suspect's left shoulder. He grabbed the suspect's upper right arm with his left hand and

moved south toward Middleton. As he moved toward the suspect, Officer Richardson pulled Middleton toward him. Officer Haight held the suspect's right forearm which was raised over his head. Richardson turned to his left and placed his right hip into the suspect's pelvic area. As Richardson turned, he pulled Middleton's shoulder downward, knocking him off balance and throwing him over his, Richardson's, hip, to the pavement.

Middleton landed head down in a prone position on the street near the curb. His head struck the pavement and was to the north. Officer Richardson dropped to his knees and straddled the suspect. The officer placed a bar-arm control hold on the suspect with his left arm. (Refer to photo number 1 for application of hold.) Richardson estimates that he held the bar-arm control hold for approximately five or six seconds before the suspect was rendered unconscious. Officers Cochran and Haight assisted Richardson in handcuffing the suspect's hands behind him.

As the officers were handcuffing the suspect, unit 12A69, 77th Street Area, Team 4, uniformed Officers P. J. Barry, 20759, the driver, and his partner J. D. Harris, 15343, arrived on the scene. Barry parked the police car headed in a northwesterly direction in the number 2 eastbound lane near the south curb of Manchester. The headlights of this unit also illuminated the suspect and the officers. Barry left the lights of the police car on as he and his partner alighted.

Approximately 30 seconds subsequent to the handcuffing, Middleton regained consciousness. Officers Cochran and Hayden assisted him to his feet and walked him in a northeasterly direction toward unit 12A97. Hayden was on Middleton's right, Cochran to his left. The officers held the suspect's upper arms as they walked.

Upon reaching the left rear of unit 12A97, Middleton stiffened his body and refused to walk. He attempted to kick Officers Hayden and Cochran. Officer Haight moved directly behind the suspect and attempted to place a bar-arm control hold on Middleton's neck from the rear. Middleton continued to struggle with the officers. The struggle moved to the right rear of unit 12A97. Officer Haight successfully applied the bar-arm control hold (as depicted in photo number 1) and pulled Middleton backward to the pavement to a sitting position. Officer Harris held the suspect's right leg down to prevent him from kicking.

Middleton continued resisting, as Officer Haight continued the bar-arm control. Haight estimates he held the control hold on Middleton for approximately 15 to 20 seconds before Middleton was rendered unconscious. As the suspect became limp, Hayden released his control hold. A very few seconds later, Middleton regained consciousness while still in a seated position. Hayden and Cochran lifted him to his feet. Officer Cochran opened the right rear door of the police unit. Officer Hayden was on the suspect's right, Cochran was on his left.

Carl Middleton again resisted as he was being placed in the rear of the police car. Officers Cochran, Hayden and Harris turned Middleton around so that his back was to the open doorway of the police vehicle. They forced the upper portion of his body into the rear seat, Thus Middleton was in a sitting position; however, his feet were on the pavement. Middleton kicked his right leg outward and upward into the opening between the door post and the hinge side of the rear door. He kicked his left foot toward the three officers in the open doorway.

Sergeant Hanf instructed Officer Cochran to enter the left rear of the police car and place a bar-arm control on the suspect. Cochran removed his service revolver from his

holster and handed it to Officer Barry. As Cochran entered the left rear door of the car, Middleton said, "What did I do?" Cochran did not reply. He placed a bar-arm control on the suspect from the rear. As this point, Middleton was in the aforementioned position with his right leg in the opening of the right rear door.

Middleton sat up from a semi-supine position on the rear seat. He placed both feet on the rear floorboard. As he did so, he pulled Cochran toward the right rear door. As Middleton pulled Cochran toward him, Middleton turned to his left in the seat. This maneuver forced Cochran to the top portion of the rear seat next to the rear window as depicted in photo number 2.

Officer Harris, who was standing at the right rear open door, reached through the opening with his right hand and pushed on Middleton's right shoulder. Officer Hunter was also in the right rear doorway. He reached out with his left hand, grabbed Officer Cochran's left hand and pulled it toward him, Hunter, to assist Cochran with additional pressure on the bar-arm control. He also held the top of the door with his right hand for leverage (as depicted in photo number 3). Officer Barry entered the rear seat through the left rear door and placed a seat belt around the suspect's abdominal area. In doing so he was kicked on the right thumb by Middleton. Cochran estimates he held the bar-arm control hold on Middleton for approximately 25 seconds before rendering the suspect unconscious. Middleton, at this point, had his back to the right rear door opening.

Officer Hunter remained in the open doorway. As the suspect became unconscious, he placed his chest against the back of the suspect's head. Officer Barry entered the driver's door in an effort to place plastic cuffs on the suspect's legs. However, the suspect remained unconscious for only a very

few seconds, and Barry was unable to place the cuffs around his ankles.

As Middleton regained consciousness, Hunter placed a bar-arm, in-chancery hold on the suspect from the rear (as depicted in photo number 3). Hunter estimates he held the hold for approximately 25 to 30 seconds before Middleton was rendered unconscious and went limp. Hunter then released his hold.

Officer Barry successfully placed the plastic cuffs around the suspect's ankles. Officer Cochran remained in the left rear seat with the suspect. Cochran felt the left side of Middleton's neck and felt a pulse. He examined the suspect's eyes with his flashlight and observed reaction.

Officer Hayden entered the police car and drove toward 77th Street station, a distance of 1.3 miles from the scene. En route, Officer Cochran periodically checked the suspect's pupils and noted that they fluctuated. Cochran also periodically felt a pulse beat at Middleton's left neck and heard the sound of breathing. Officer Hayden heard the suspect sigh on two occasions en route to the station.

Sergeant Hanf followed unit 12A97 to the station. As 12A97 reached 76th Street and Broadway, Cochran could not detect a pulse beat. He so advised Officer Hayden. Hayden drove one-half block into the rear parking area of 77th Street station and stopped. Cochran advised Sergeant Hanf that he believed that the suspect had expired. Officer Hayden opened the right rear door, and Middleton slumped into the door opening. Sergeant Hanf was also unable to locate a pulse beat.

The sergeant noted that the suspect's left pupil was dilated and there was no reaction. Sergeant Hanf advised Cochran and Hayden to transport the suspect to Morningside Hospital, a distance of 2.7 miles, code 3. Officer Cochran

moved to the right front passenger's seat. Middleton lay on his right side on the rear seat. As they drove toward the hospital, Cochran advised Communications: "12A97, code 3, en route to Morningside Hospital." Communications received this broadcast at 0435 hours.

Upon arriving at the emergency entrance to Morningside Hospital, 8711 South Harvard, a vehicle was blocking the emergency doorway. Uniformed Officer J. E. Gryder, 17638, 77th Street Area, Team 2, who was at the hospital on another matter, moved the vehicle at the request of Officer Cochran. The officers estimate they were delayed approximately three to four minutes by the vehicle blocking the emergency entrance. Middleton was pronounced DOA at Morningside Hospital by Doctor M. Ward at 0510 hours.

*INJURIES AND WEAPONS*

On May 27, 1975, at 1000 hours, a post-mortem examination was performed on the body of Carl M. Middleton at the Los Angeles County Morgue by Deputy Medical Examiner, Doctor Joseph H. Choi. Doctor Choi ascribed cause of death as "strangulation" and described the injuries as follows:

(1) Fractured cricoid cartilage and a crushed thyroid cartilage with hemorrhage to the surrounding tissues. The injuries were fatal.

(2) Petechiae to both lower portions of the eyes and subepicardial petechiae, which is compatible with strangulation.

(3) Subarachnoid hemorrhage to the frontal lobe of the brain (not fatal).

(4) Enlarge lymph nodes around the liver indicate the deceased was a heavy user of narcotics.

Toxological [*sic*] tests that have been completed at the time of this report indicate the deceased did not have any

narcotics or alcohol in the blood at the time of death. Additional toxological [*sic*] tests are being conducted.

According to Doctor Choi, the injuries are compatible with the type of holds and force employed to the throat as described in the Chronological Narrative portion of this report.

*NOTIFICATIONS*

Captain Gene Rock, Commanding Officer, and Lieutenant C. A. Higbie, Officer in Charge, Officer-Involved Shooting Investigations, Robbery-Homicide Division, were notified at 0430 hours. They assigned Investigators D. R. Ham, 5621, and J. P. St. John, 2698. Lieutenant Higbie and the investigators responded to the scene from their homes. The investigators arrived at 0510 hours.

*PERSONNEL AT THE SCENE*

Commander D. Sanchez, Assistant to Commanding Officer, South Bureau

*77th Street Area*

Captain J. C. Hardin, Commanding Officer

*Sergeant P. D. Hanf, 13844, 12L520, Team 5 (5′ 11″, 185 pounds)

Sergeant R. S. Gil, 14532, 12L330, Team 3 (5′ 8″, 150 pounds)

Officer R. A. Smith, 14936, 12A23, Team 1 (5′ 10″, 180 pounds)

Officer A. W. Richardson, 20878, 12A23, Team 1 (6′ 1″, 200 pounds)

Officer J. D. Hayden, 13383, 12A97, Team 5 (5′ 10″, 180 pounds)

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*1st uniformed supervisor at the scene

Officer R. K. Cochran, 20608, 12A97, Team 5 (6′ 1½″, 190 pounds)
Officer K. R. Haight, 20205, 12L530, Team 5 (6′ 4″, 210 pounds)
Officer J. D. Harris, 15343, 12A69, Team 4 (5′ 9″, 155 pounds)
Officer P. J. Barry, 20759, 12A69, Team 4 (5′ 10″, 180 pounds)
Officer S. C. Clements, 15178, 12A57, Team 3
Officer W. R. Sweet, 16154, 12A57, Team 3
Officer J. E. Gryder, 17638, 12A49, Team 2
Officer V. W. Parisi, 20362, 12A49, Team 2
Officer A. W. Groenke, 12868, 12A83, Team 5
Officer F. O. Rood, 21051, 12A83, Team 5

*South Traffic Division*

Captain H. D. Burns, Commanding Officer
Officer K. P. Hornick, 14200, 3T93
Officer R. L. Hunter, 17828, 3T93 (5′ 11″, 185 pounds)

*Internal Affairs Division*

Lieutenant B. C. Medina, 11067
Sergeant A. R. Keidser, 10031
Sergeant G. E. Ornelas, 11979

*Los Angeles County Coroner's Office*

W. F. Payne, Investigator

*Scientific Investigation Division*

Photos: G. E. Thomas, H9181

*SUSPECT*

MIDDLETON, Carl Michael, CII 3 884 027, FBI 370 8598, SS 553-76 9214, male Negro, DOB: 9-17-49, 6′ 5″, 245 pounds, black hair, brown eyes. At the time of his death he resided with his parents, Ernest and Laura Middleton,

609 North Kalsman, Compton, California. Middleton has a felony and misdemeanor record dating back to 1969 which is as follows:

| | | | |
|---|---|---|---|
| 8-31-69 | PD Compton | Susp. Aslt. with Int. to Commit Murder | No dispo. |
| 5-18-70 | PD Compton | D.P. and VRDL. Warr. 37559 | No dispo. |
| 7-7-73 | PD Compton | Poss. Drugs | No dispo. |
| 8-13-74 | SO Los Angeles | Burglary | No dispo. |
| 10-16-74 | CO Probation Dept. LA | 23105, 12951, 23103 VC 11550 H&S | 11-26-74, 231 VC PROC SU 3 yrs Prob 11- 25-77, Exp. |
| 10-21-74 | SO Los Angeles | 459 P.C. | No dispo. |
| 11-6-74 | SO Los Angeles | 459 P.C. | No dispo. |

On May 28, 1975, the brother and sister of the deceased, Wylie Middleton, 5222 Pendleton Street, South Gate, phone 979-1420, and Gloria Prince, 11142 Yukno [*sic*], Inglewood, phone 678-6823, were interviewed. The relatives stated in substance that their brother had been using heroin since 1969 and subsequently started using LSD in 1970. As a result of using the drugs, he became addicted and mentally ill. He was treated at Camarillo and Metropolitan State Hospitals on several occasions. It was their opinion that the treatment at the state hospitals failed to cure his addiction. He had been unable to work and was dependent upon the Department of Public Welfare for subsistence.

Carl Middleton was last seen Tuesday morning, 5-27-75, at 0100 hours, by his older sister at his residence in Compton. He stated he was going to his girlfriend's home in the vicinity of 82nd and Budlong.

On 6-2-75, Vincent Miles, Los Angeles County Probation Officer, South Central Area, 445 South Santa Fe Avenue, Compton, phone 639-6010, was interviewed. Miles stated in substance that his records indicated that Middleton had

been on probation for DUI since November 26, 1974, and that he had been a narcotics addict for several years. The County Probation office treated him for narcotics addiction in several of their anti-narcotics programs with negative results.

On April 7, 1975, Miles transferred Middleton's case to the Los Angeles County Probation Office at 4513 East Compton Boulevard, Compton. Thomas Hope, the assigned probation officer, stated that he was not familiar with Middleton's background. On May 23, 1975, he had Middleton tested for narcotic use with negative results.

*EVIDENCE*

Evidence booked in connection with this incident consists of 1 black, silk man's T-shirt.

*WITNESSES*

Statements of the witnesses below are consistent with the Chronological Narrative portion of this report and are on file at Robbery-Homicide Division.

BLOCK, John R., 142 West 87th Street, phone 750-5832 (Tape No. 58981)

BARSTON, Mary, 1524 East 109th Street, phone 752-4469, employed at Norm's Restaurant, 8511 South Figueroa, phone 751-6367

SELLERS, Mary, 837 St. Clair, Costa Mesa, phone 751-7387, employed at Norm's Restaurant, 8511 South Figueroa, phone 751-6367.

*COMMUNICATIONS*

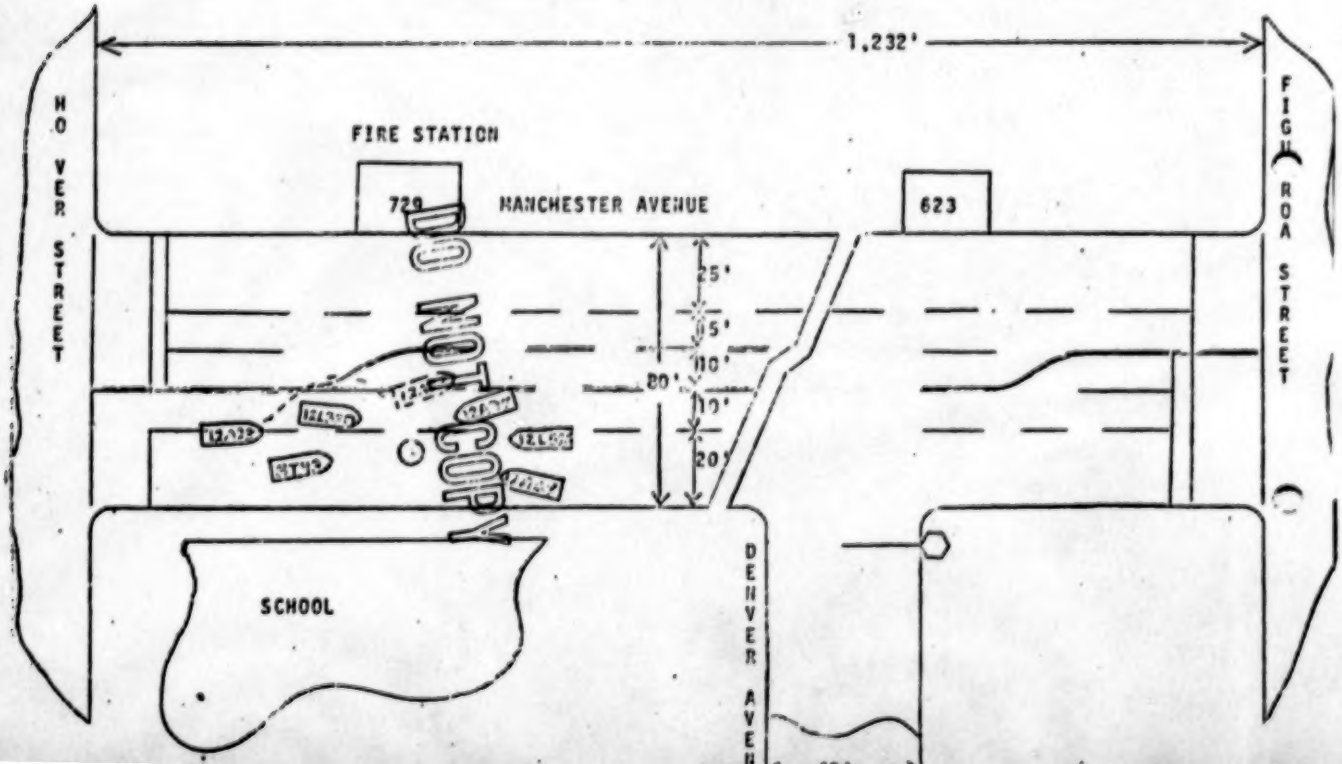
Copies of communication tickets pertaining to this incident are on file at Robbery-Homicide Division.

APPROVED: /s/ C. A. Higbie
LIEUTENANT C. A. HIGBIE, OFFICER IN CHARGE
OFFICER-INVOLVED SHOOTING INVESTIGATIONS
ROBBERY-HOMICIDE DIVISION

NORTH

(DIAGRAM NOT TO SCALE)

DR 75-544 953
May 27, 1975
St.John & Ham, Robbery-Homicide Division



**Selected Portions of the Autopsy Report of Carl Middleton (Exhibit 2).**

Autopsy-Dr. Choi
D-Tox
CASE REPORT

Crypt # 82; Tape # None.

Reported as: Accident; Homicide; In Custody. Choked out by police during arrest, DOA Morningside Hospital. Case No. 75-6505; Taken by Lien; Post Mortem at Coroner.

Name of Deceased Carl Michael Middleton.

Date of Death May 27, 1975.

Hour 0510.

Sex M.

Color or Race Black

Place of Death Morningside Hospital.

Street Address 8711 S. Harvard Blvd.

Inside City Corporate Limits Yes.

City or Town Los Angeles.

County Los Angeles

Reported by Sgt. St. John; Address LAPD Robbery-Homicide; Date 5-27-75; Time 0645; Pronounced Dead by Dr. Ward; Investigating Agency LAPD Robbery Homicide; Officer Sgt. St. John; Date 5-27-75; Time 0715; Hospital No. 051766.

Specify Acc? Homi? Nat?

Place of Injury Street.

Injury at Work No.

Date of Injury 5-27-75; about.

Hour 0400.

Place of Injury 623 W. Manchester Ave. Los Angeles.

Describe How Injury Occurred As Above.

Certificate Issued: To Mortuary Deferred By HW 5-28-75.

## AUTOPSY REPORT

No. 75-6505

I performed an autopsy on the body of JOHN DOE #66, LATER IDENTIFIED AS: MIDDLETON, CARL M. at DEPT. OF CHIEF MEDICAL EXAMINER-CORONER, 1104 N. Mission Rd., Los Angeles on May 27, 1975 @ 1000 hours.

From the anatomic findings and pertinent history I ascribe the death to: (a) ASPHYXIATION; due to or as a consequence of (b) MANUAL COMPRESSION OF NECK.

*Anatomical Summary:*

1. Fracture of left cricoid cartilage.
2. Contusion of neck muscles.
3. Petechial hemorrhages over the eyelids and heart.
4. Subarachnoid blood stain over the brain.
5. Tracks of old needle marks on both antecubital fossa.

**Los Angeles Police Department Report on the Death of Francis Fairbanks (Exhibit 5).**

OPERATIONS HEADQUARTERS BUREAU
REPORT OF LAW ENFORCEMENT ACTIVITY DEATH*

The City Attorney of Los Angeles considers this report as highly confidential and a privileged communication between the involved officers and their attorney. Administrative use is limited to concerned staff and command personnel of the Los Angeles Police Department. Any other use is forbidden by the City Attorney.

This report has a registered distribution. Please return the report to Robbery-Homicide Division as soon as practicable. Robbery-Homicide Division is responsible for maintaining a record of outstanding reports. The return of this copy of the report will be recorded.

THIS REPORT IS *NOT* TO BE REPRODUCED OR COPIED

*CONFIDENTIAL*

Report of Law-Enforcement Activity Related Death: DR 75-652 646, 415 P.C. SUSPECT, FAIRBANKS, Francis Edmund (DECEASED), Male Caucasian, 21 years.

Involved Officer: C. G. ZEUNER, 14598.

Date and Time of Occurrence: August 10, 1975, 0017 hours.

Location of Occurrence: 9221 Woodale Avenue.

Area of Occurrence: Foothill Area, R/A 1661.

Officer-Involved Shooting Team: INVEST. III D. R. HAM, 5621, INVEST. II J. P. ST. JOHN, 2698.

*PRINTER'S NOTE: the words "Do Not Copy" appear across each page of the original document.

*CONFIDENTIAL*

*THIS REPORT IS FOR THE CONFIDENTIAL USE OF THE CITY ATTORNEY.*

TO: BURT PINES, CITY ATTORNEY.

Sir:

*CHRONOLOGICAL NARRATIVE*

On Friday, August 8, 1975, at approximately 2015 hours, Francis E. Fairbanks, a male Caucasian, 21, left his home at 9221 Woodale Avenue, Arleta, accompanied by his brother, John P. Fairbanks, and a friend, Jeff Ceurvorst. Ceurvorst used his vehicle, a 1955 Chevrolet, four-door, blue sedan, and drove the two men to a party being given by Paul Russell, who resided at 8408 Fenwick Avenue in Sunland. According to John Fairbanks, they arrived at Russell's home at approximately 2030 hours. There were approximately 15 to 20 men and women at the party, all of whom were drinking beer.

At approximately 0100 hours, on 8-9-75, John Fairbanks and Jeff Ceurvorst left the party. Francis Fairbanks remained at the party and advised his brother that he would get someone else to take him home. John stated before he left the party, he observed that Francis had only one beer during the four hours he was at the party. He also stated he did not see or detect anyone using any type of narcotics at the party.

At approximately 0330 hours, on Saturday, 8-9-75, Paul Russell and another member of the party, Gregory Curtis, were asleep. They were awakened by someone yelling outside their residence at 8408 Fenwick. Curtis stated he and Russell looked north out the window and observed a gold El Camino Chevrolet with a camper shell parked on the north side of the street, heading west. The passenger in the vehicle was continually yelling, "Thank you, Jesus, thank you, Jesus" in a very loud manner. Russell and Curtis

denied knowing the driver or the passenger of the vehicle. (They both subsequently advised LAPD officers that Francis Fairbanks exited the gold El Camino, still screaming and hollering, "Thank you, Jesus" and then the driver of the vehicle immediately drove away.)

At approximately 0430 hours, Donna Foster, 8420 Fenwick, and a girl friend, Duvey Snell, were asleep in the Foster residence. They were awakened by dogs barking. Miss Foster looked out her front window and observed a man lying on his back near the north side of the street, directly north of her home. He appeared to be chanting and yelling, "Thank you, Jesus" over and over again. Miss Foster called the police.

At approximately 0450 hours, uniformed Officers R. N. Gale, 16423, the driver, and his partner, S. C. Metz, 20973, unit 16Z89, team 3, received a radio call, "Prowler, 8420 Fenwick." The officers responded and upon arrival observed a male Caucasian, later identified as Francis E. Fairbanks, lying in the street, directly across from 8420 Fenwick, in a fetal position, on his right side. He repeatedly yelled, "Thank you, Jesus." He continued yelling this phrase for approximately 10 minutes.

Officer Gale contacted the complaining party, Donna Foster, at 8420 Fenwick and she verified she called the police after seeing Fairbanks lying in the street. Gale returned to the suspect and his partner's location. They rolled him over into a prone position and handcuffed his hands behind his back. Fairbanks began kicking his legs, directing them at the officers. Officer Gale removed Fairbanks' three-quarter length brown boots and placed plastic cuffs around his ankles. Fairbanks then relaxed and stopped yelling and appeared to go to sleep. Gale removed a wallet from Fairbanks' rear pants pocket and found several items of identification, including a temporary license, Social Security

card, and a Geneva convention card, all in the name of Francis E. Fairbanks, 9221 Woodale Avenue, Arleta.

After examining Fairbanks and talking to the reporting party, the officers concluded that there was no violation of the law and decided to transport him to the residence at 9221 Woodale Avenue, Arleta. Gale and Metz lifted Fairbanks by the shoulders and feet and placed him in the rear seat of the police vehicle. As they started to drive eastbound on Fenwick, two males and a female, who were in front of the residence, two doors east of 8420 Fenwick (8408 Fenwick), beckoned for the police vehicle to stop. Gale stopped the police vehicle and the three persons advised the officers they had observed Fairbanks exit a gold El Camino. He was screaming and the driver of the Chevrolet El Camino immediately drove away.

Gale drove to 9221 Woodale Avenue where he parked the police vehicle in front of the residence. Metz remained in the police vehicle with Fairbanks. Gale went to the front door where he contacted Everitt and Mary Fairbanks. The Fairbanks stated they were the mother and father of Francis Fairbanks. Gale questioned the parents and attempted to obtain information regarding Fairbanks' mental condition and whether he had been using any type of narcotics. Both parents denied that he had a mental problem or used narcotics. Everitt Fairbanks accompanied Gale to the police vehicle where he identified his son.

Officer Gale suggested to Everitt Fairbanks that his son be taken to a hospital for medical treatment. Gale advised Mr. Fairbanks that he would transport Francis to the hospital. Both Mr. and Mrs. Fairbanks refused the offer and requested the officers to carry Francis Fairbanks into the house and place him in bed. The officers complied with their request. After carrying Fairbanks into the residence, they left the location and continued their patrol duties.

Approximately one hour after the officers brought Francis Fairbanks home, Mrs. Fairbanks stated that he became conscious and appeared to be okay. Neither Mrs. Fairbanks nor her husband called a doctor or sought medical aid. Both Mr. and Mrs. Fairbanks questioned their son regarding the incident and he stated in substance that he remembered being in the gold El Camino a few hours earlier with a person known only as John (no further description). He stated that he was "praying and trying to cast out a demon. The demon was attacking him and he was trying to fight it." He admitted to his parents that he had been taking LSD (Lysergic Acid Diethlamide) and smoking canabis sativa (marijuana).

After the conversation with his parents, he went back to sleep until approximately 0900 hours. He then got out of bed and took a shower and got dressed. At approximately 1100 hours, he went to lunch with his brother, Michael Fairbanks. They returned home approximately two hours later. His brother, Michael, left and Francis Fairbanks left on foot to visit unknown person or persons in the neighborhood. He returned home at approximately 1500 hours. Mary K. Fairbanks, Francis' sister, who was visiting the parents' home, advised Francis that she had learned there was going to be a lecture regarding narcotics at the Pacoima Recreation Center, Herrick Avenue and Pierce Street, in Pacoima. The person giving the lecture was identified as Nicky Cruz (unable to obtain further identification), who was a former narcotics user.

Francis Fairbanks agreed to go and at approximately 1800 hours, he accompanied his parents, Everitt and Mary Fairbanks, and his sister, Mary K. Fairbanks, to the Pacoima Recreation Center. Mr. Fairbanks drove to the location in his vehicle, a 1973, four-door, Mercury sedan. All members of the Fairbanks family were attending the lecture. They

stood on the grass in a baseball field of the Pacoima Recreation Center listening to the lecturer.

At approximately 2100 hours, Everitt Fairbanks observed that his son had his eyes closed and was repeating the phrase "Jesus" over and over again. A few minutes later, Francis assumed a sitting position. Moments later, he lay down on his back and appeared to lapse into unconsciousness. None of the family called a doctor or an ambulance because "they thought it was an emotional and spiritual incident." Francis Fairbanks lay on the ground, apparently unconscious, for approximately 20 minutes. His father and an unidentified male Caucasian carried Francis to the bleachers of the baseball field where he was laid in a supine position on one of the bleacher seats. He was still unconscious and his parents allowed him to remain at this location for approximately 45 minutes until 2245 hours. Everitt Fairbanks, with the assistance of the same unidentified male Caucasian, then carried Francis Fairbanks to his vehicle where he was placed in a sitting position in the rear seat. His mother and his sister, Mary K. Fairbanks, sat in the rear seat with him. Everitt Fairbanks drove the vehicle to his residence at 9221 Woodale Avenue, Arleta, arriving at approximately 2300 hours.

After Everitt Fairbanks parked his vehicle in the driveway in front of the residence, all the members of the family started talking to Francis and attempted to wake him. They stated that he would "twitch" and open his eyes occasionally and a few minutes later, he started to regain consciousness. As he did so, he started to hallucinate and progressively became more violent by kicking and swinging his arms. In order to avoid injuries, his mother and sister left the rear seat of the vehicle. Everitt Fairbanks continued talking to his son in an effort to calm him down; however, a few minutes later, Francis lunged over the front seat and

attempted to grab his father. Everitt Fairbanks, fearing injury to himself, quickly exited the passenger's side of the vehicle. Francis fell into the front seat with his head and shoulders extending out of the passenger's door, touching the driveway.

As Francis fell forward, Everitt Fairbanks observed his neighbor, Officer C. G. Zeuner, 14598, Jail Division, drive into the driveway of his residence at 9229 Woodale Avenue, Arleta. Officer Zeuner was off duty and accompanied by a friend, Faye Devine. Everitt Fairbanks, fearing he would be unable to handle his son, requested his daughter to go over and ask Officer Zeuner for assistance. Mary K. Fairbanks complied and went to Zeuner's location where she stated, "Cary, can you come over and help? Frank has just flipped out. You might need something to restrain him, he's fighting us." Zeuner went to the location where he observed Francis Fairbanks in the front seat of a 1973, four-door, Mercury sedan, lying in the front passenger's seat with his shoulders and head extending out the open passenger's door. His head was touching the asphalt driveway and was facing in a southerly direction. Zeuner removed his suit-coat jacket and placed it on the hood of the vehicle. It appeared to Zeuner that Francis Fairbanks had passed out.

Zeuner called to Francis who immediately responded by kicking his legs, waving his arms and yelling unintelligible sounds. Francis Fairbanks moved backwards, out of the vehicle. He lay on the driveway in a fetal position and ceased yelling and kicking. A few minutes later, Everitt Fairbanks started talking to his son again and called him by his first name, "Frank." Francis Fairbanks again began kicking, waving his arms and yelling unintelligible sounds.

He got to his knees and pushed his mother, who was standing near the passenger's door, backwards. He then moved to a crouched position and lunged eastward. He

grabbed his father around the chest with both arms. Everitt Fairbanks fell to a supine position and Frank fell on top of him. Frank Fairbanks began striking his father about the body with both fists. Officer Zeuner jumped on top of Frank Fairbanks' back and attempted to subdue him. The three men struggled and rolled over several times on the lawn. Zeuner, after a few seconds, successfully pulled Frank from his father, and attempted to place a bar-arm control on him. Simultaneously, Zeuner told his friend, Faye Devine, who was standing nearby, "Get the handcuffs out of the glove box in the Datsun." Faye Devine immediately ran to Zeuner's vehicle.

Officer Zeuner continued attempting to place a bar-arm control around Frank Fairbanks' neck. Zeuner estimates he had his arm around Frank Fairbanks' neck for approximately one minute. During this time, he could only apply pressure for approximately 4 seconds. Frank Fairbanks did not become unconscious during the struggle. Faye Devine returned and gave Everitt Fairbanks the handcuffs. Everitt Fairbanks gave the handcuffs to Zeuner, who handcuffed Francis Fairbanks' hands behind his back. Francis Fairbanks was lying in a prone position.

After handcuffing Fairbanks, Zeuner continued lying, with the upper portion of his body, on Francis Fairbanks' shoulders. Fairbanks continued to struggle and Zeuner advised Everitt Fairbanks to obtain some rope so they could tie Frank's feet. Everitt Fairbanks went to his vehicle trunk and returned in a few minutes with some nylon rope, approximately ¼-inch in diameter. Everitt Fairbanks tied it around Frank's legs. Frank Fairbanks then appeared to relax and was breathing regularly. Zeuner inspected the rope that was tied around Frank's legs and found it was not properly secured. Zeuner tightened the rope around Frank's legs.

Frank appeared to relax and both Zeuner and Everitt Fairbanks stood up.

Mrs. Fairbanks and Faye Devine walked to the Zeuner's residence where Mrs. Fairbanks called the Veterans Administration Hospital, 16111 Plummer Street, Sepulveda. She talked to an unknown employee and requested medical treatment for her son. The employee told Mrs. Fairbanks that if she would bring her son to the emergency entrance of the hospital, they would give him medical treatment. While Mrs. Fairbanks was making the call, Zeuner dropped to his right knee, rolled Frank to his left and onto his back. Simultaneously, Everitt Fairbanks asked Zeuner, "Is he breathing?" Zeuner felt Frank Fairbanks' neck and was unable to detect a pulse, however, he was warm to the touch. Everitt Fairbanks immediately began mouth-to-mouth resuscitation on his son. Zeuner entered the Fairbanks' residence, dialed the operator, identified himself, and requested a rescue paramedic unit be sent to the scene. This call was received by RA 81 at 0008, 8-10-75.

Zeuner returned to the scene where Everitt Fairbanks continued mouth-to-mouth resuscitation on his son. Zeuner struck Frank on the chest several times in an attempt to activate his heart. He also removed the handcuffs from his wrists. He relieved Everitt Fairbanks and attempted mouth-to-mouth resuscitation. Both men continued to alternately administer mouth-to-mouth resuscitation until rescue ambulance unit 81 arrived on the scene at 0016.

The rescue ambulance unit made an examination and pronounced Francis Fairbanks dead at 0017 hours. At approximately 0020 hours, 8-10-75, uniformed Officers D. L. Pruett, 20023, the driver, and his partner, M. O. Henley, 20620, unit 16A31, team 2, received a radio call: "Death investigation, 9221 Woodale." The officers responded to the scene where they met rescue ambulance unit 81 and

learned that Fairbanks had been pronounced dead at 0017. They observed Fairbanks lying on the lawn at 9221 Woodale in a supine position, covered by a sheet.

The officers interviewed Everitt Fairbanks and learned of the circumstances leading to his son's death. He also advised the officers that his son had used Hashish, LSD, Angel Dust, and marijuana while he was in the service in Germany. Everitt Fairbanks also told the officers that his son had ingested LSD three or four days prior to the incident.

The coroner's office was notified of the death. Deputy Coroner Joseph Luckey responded and removed the remains to the Los Angeles County Morgue.

*INJURIES*

On 8-11-75, at 1230 hours, a post-mortem examination was performed on the body of Francis E. Fairbanks at the L.A. County Coroner's Office by Doctor R. Bucklin. Doctor Bucklin stated that the cause of death appeared to be from an overdose of an unknown type of narcotics. The exact cause of death will be pending toxicological examination and is not available at the time of this report. He also stated that there was a slight hemorrhage to the tissue on the right side of the larynx, a slight abrasion to the spleen and contusions to the upper arms. None of the injuries were serious and were compatible with the struggle the deceased had with Zeuner and Everitt Fairbanks prior to death. No other trauma was noted.

The results of the toxicological examination may be found in Robbery-Homicide Division files when completed.

*WEAPONS*

Not applicable.

*NOTIFICATIONS*

On 8-10-75, at 0500 hours, Captain G. Rock, Commanding Officer, and Investigator III D. R. Ham, Acting Officer-in-Charge, Officer-Involved Shooting Investigations, Robbery-Homicide Division, were notified of the incident. Investigator D. R. Ham and Investigator J. P. St. John responded to the scene from their residences.

*PERSONNEL AT THE SCENE*

*Foothill Area*

*Sergeant S. C. Moede, 14653, Headquarters Watch Commander;
Officer R. N. Gale, 16423, Unit 16A89, Team 3;
Officer S. C. Metz, 20973, Unit 16A89, Team 3;
Officer D. L. Pruett, 20023, Unit 16A31, Team 2;
Officer M. O. Henley, 20620, Unit 16A31, Team 2.

*Van Nuys Area*

Officer R. L. Jamieson, 14219, Unit 9KW23

*Jail Division*

Officer C. G. Zeuner, 14598

*Los Angeles Fire Department Rescue Ambulance Unit 81*

Attendant — Price; Driver — Stanton.

*Los Angeles County Coroner's Office*

J. Luckey

*SUSPECT*

FAIRBANKS, Francis Edmund, male Caucasian, dob: August 13, 1953, 6′, 185 pounds, brown hair and eyes. Suspect has no prior L.A.P.D. record. At the time of his death, he was living at 9221 Woodale Avenue, Arleta, with his parents, Everitt E. and Mary C. Fairbanks.

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*First uniformed supervisor at the scene

Reporting officers interviewed the suspect's parents on August 10, 1975, at 0930 hours, in their home, 9221 Woodale Avenue, Arleta. Also present at this interview was a daughter, Mary K. Fairbanks, female Caucasian, 27, who resides at 11037 Odessa Avenue, Granada Hills. They provided the following information regarding the suspect's background.

Francis Fairbanks lived at the above address since 1955 and subsequently graduated from Francis Polytechnic High School, 12431 Roscoe, Sun Valley. He enrolled at Valley Junior College for one semester and on February 10, 1972, he enlisted in the United States Army Tank Corp for a term of three years. He spent part of the term in Germany.

On February 10, 1975, he was honorably discharged. He returned to the Valley area where he lived with his brother, Everitt Michael Fairbanks, 8760 DeSoto Street, #208-M, Canoga Park. He remained with his brother for approximately three weeks and moved on or about March 1, 1975, and returned to his parents' home at 9221 Woodale Avenue, Arleta. He occasionally attempted to find employment during this period, but was unsuccessful. He appeared to be acting normal until June 12, 1975.

He left home with some unknown friends and at 0300 hours, on June 13, 1975, he telephoned his mother and stated, "I called up to tell you good bye. The Lord is telling me to go somewhere." Mrs. Fairbanks was successful in calming him down, and subsequently picked him up and transported him home in the family vehicle.

On or about July 10, 1975, he admitted to his sister, Mary K. Fairbanks, that he was depressed and was going to commit suicide by jumping off one of the high tension towers in the area. He later changed his mind. On or about August 3, 1975, he became extremely emotionally upset and later

admitted to his mother that he had been smoking marijuana. On August 5, 1975, he returned home after being away with some unknown friends and started to have hallucinations. The following day, August 6, 1975, he admitted to his mother that he been smoking Angel Dust. On Friday, August 8, 1975, when he was coherent, he admitted using LSD, Angel Dust, and marijuana. He stated he last ingested LSD on Monday, August 4, 1975, and smoked marijuana on Thursday, August 7th.

The Fairbanks did not seek medical assistance for their son during the above period of time.

*EVIDENCE*

Not applicable.

*WITNESSES*

The following witnesses' statements are compatible with the Chronological Narrative section of this report. Their statements were tape recorded on tape number 59779.

*FAIRBANKS, Everitt E.* (father of deceased); *FAIRBANKS, Mary C.* (mother of deceased), 9221 Woodale Avenue, Arleta, telephone 899 6051.

*FAIRBANKS, Mary K.* (sister of deceased), 11037 Odessa, Granada Hills, telephone 369 3129, employed at Veterans' Administration Hospital, 16111 Plummer Street, Sepulveda, telephone 894 8271, Extension 2403.

*DEVINE, Faye*, 8560 Cozy Croft, Canoga Park, no phone. This witness' statement may be found in Robbery-Homicide Division files. The statement was not tape recorded.

*COMMUNICATIONS*

Not applicable.

Approved: /s/ M. J. McGann, 10329
INVESTIGATOR III M. J. MC GANN, 10329
Acting Officer-in-Charge
Officer-Involved Shooting Investigations
Robbery-Homicide Division

**Selected Portions of**
**the Autopsy Report of Francis Fairbanks (Exhibit 4).**

Autopsy — Dr. Bucklin
D-Tox
CASE REPORT

Tape # 1-41A; Start 1375; End 1410.

REPORTED AS: Accident.

Poss. adverse reaction LSD, officer involved in restraint prior to death. Taken LSD 4 days prior to death.

Case No. 75-9571; Taken by Linnecke.

Post Mortem at CME Coroner.

Name of Deceased Frank Fairbanks.

Date of Death Aug. 10, 1975; Hour Hrs. 0017.

Sex M; Color or Race Cauc.

Date of Birth 8-13-53; Age 21 years.

Name and Birthplace of Father Everett Fairbanks.

Social Security Number 539-38-1655.

Married, Never Married, Widowed, Divorced (specify) Never Married.

Street Address 9221 Woodale Ave.; Inside City Corporate Limits Yes.

City or Town Arleta; County L.A.

Usual Residence Same as 18B.

Reported by Jamieson Address LAPD Van Nuys.

Date 8-10-75 Time 0212; Pronounced Dead by RA #81.

Investigating Agency LAPD Valley; Officer Jamieson.

Next of Kin Mr. Everett Fairbanks; Address Same as 18B.

Relationship Father; Phone 899-6051; Notified by Present.

Specify Accident. Injury at Work No.

Describe How Injury Occurred As Above. Date 8-10-75.

Certificate Issued: To Mortuary Deferred By MS [*illegible*].

## AUTOPSY REPORT

No. 75-9571

I performed an autopsy on the body of FAIRBANKS, Frank at Office of Chief Medical Examiner-Coroner 1104 N. Mission Rd. on August 10, 1975 1230 hours.

From the anatomic findings and pertinent history, I ascribe the death to: (A) ACUTE CARDIORESPIRATORY ARREST; (B) COMPRESSION OF NECK.

Other Significant Conditions — CONVULSIVE DISORDER, PROBABLY DRUG INDUCED.

*Anatomical Summary:*

1. Pulmonary edema and congestion.
2. Perilaryngeal hemorrhage.
3. Mucosal hemorrhage of left vocal cord and larynx.
4. Laceration of spleen.
5. Hemoperitoneum, 100 cc.
6. Multiple cutaneous comedones. some hemorrhagic.
7. Cutaneous abrasions and bruises.
8. Compression cutaneous defects of wrists and ankles.

**Los Angeles Police Department Report on the Death of Booker Ford (Exhibit 7).**

Report of Law-Enforcement Activity Related Death:* DR 75-687 658, 415 P.C. SUSPECT, FORD, Booker Thomas (DECEASED), Male Negro, 28 years.

Involved Officers: R. C. HYDE, 16896, 3A58; R. CASTRUITA, 17991, 3A58; M. A. WOOD, 16655, 3A88; R. E. SHORB, 20653, 3A88.

Date and Time of Occurrence: November 4, 1975, 0305 hours.

Location of Occurrence: 1042 West 43rd Street, Apt. #3.

Area of Occurrence: Southwest Area R/D 365.

Officer-Involved Shooting Team: INV. III M. J. MC GANN, 10329; INV. II J. L. MOUNT, 12247.

*CONFIDENTIAL*

*THIS REPORT IS FOR THE CONFIDENTIAL USE OF THE CITY ATTORNEY*

*TO:*

*BURT PINES, CITY ATTORNEY*

*Sir:*

*CHRONOLOGICAL NARRATIVE*

On Tuesday, November 4, 1975, at approximately 0230 hours, Booker T. Ford went to his girl friend, Teri Walker's residence, 1042 West 43rd Street, apartment #3. He knocked on the outside bedroom window. Teri Walker got out of bed and peered out the bedroom window. She observed Ford standing at the window. She walked from her bedroom to the living room where she opened the front door and admitted Ford.

After a brief conversation, Walker asked Ford if he would take out the trash. He complied, making several trips to the outside rubbish disposal. (According to Walker, Ford was

*PRINTER'S NOTE: the words "Do Not Copy" appear across each page of the original document.

acting normal at this time.) Ford entered the bathroom which adjoins the bedroom of the residence. Walker heard water running in the sink and assumed he was washing. She also heard the toilet flush.

After approximately 3 to 5 minutes had elapsed, Walker heard what she described as a weird hollering sound emanating from within the bathroom. She entered her bedroom and opened the bathroom door. She observed Ford standing in the middle of the bathroom chanting (unintelligibly) in a very loud voice. He had removed his shirt, pants, and shoes and was now attired in a pair of boxer shorts and his socks. Ford was perspiring heavily. He continued to holler and commenced stamping his feet on the floor.

Walker advised Ford that he would have to put his clothes on and leave. Ford walked out of the bathroom, leaving his clothing on the bathroom floor. He walked through the bedroom, into the living room. Walker closed the bedroom door and remained in the bedroom. She again demanded that Ford leave. Ford did not comply and continued hollering and jumping around in the living room.

At 0249 hours, Walker used the telephone which was located in her bedroom and called the Complaint Board of the Los Angeles Police Department. She advised operator #49 that there was a man in her residence "acting crazy" and she wanted him removed. After completing the call, Walker opened the bedroom door and entered the living room. She walked to the front door and unlocked the door, leaving it ajar. Ford was still hollering and jumping about in the living room. She returned to her bedroom and closed the door. Ford was still hollering and Walker could hear him pounding on the living room wall.

At 0256 hours, Southwest Area uniformed Officers M. A. Wood, 16655, driver, and R. E. Shorb, 20653, unit

3A88, A. M. Watch, received a radio call: "415 man, 1042 West 43rd Street, apartment #3." There was no code on the call. Before the officers could acknowledge the call, Southwest Area uniformed Officers R. C. Hyde, 16896, the driver, and R. Castruita, 17791, unit 3A55, A. M. Watch, advised Communications that the location of the call was in their area and they would "handle" the call. Officer Shorb advised Communications that they had monitored 3A58's transmission and would back up the unit at the 43rd Street location.

Officer Hyde recalled that approximately two months prior, a set-up (possible ambush) call had originated from 1040 West 43rd Street. He was also cognizant of the fact that 1040 and 1042 were single-story apartment units which composed a court. On the prior call, a caliber 30-30 rifle had been found abandoned in a rubbish container at the rear of 1040 West 43rd Street. Also, two male Negroes had been seen running from the general vicinity where the rifle had been abandoned. Officer Wood was also aware of the prior suspected ambush and so advised Officer Shorb of the incident.

Officer Hyde advised Communications to have 3A88 meet him on Tactical Frequency 2. Shorb overheard this request via his monitor and advised Communications that he had copied 3A58's transmission. The units met on Tactical Frequency 2. Hyde advised unit 3A88 of the prior incident regarding the caliber 30-30 rifle. Shorb advised 3A58 that they were aware of the incident. Air unit 70, piloted by R. W. Kreutz, 13398, and observer Officer D. L. Abbott, 14293, inquired of 3A58 via radio the nature of their call. Hyde advised Air 70 that they were responding to a 415 man call. Hyde also advised the air unit of the prior suspected ambush incident. Air 70 advised 3A58 that they were en route to their call and would illuminate the area.

Units 3A58 and 3A88 formulated a plan via radio in which unit 3A88 would approach 1042 from the west without lights and 3A58 would approach 1042 from the east without lights. Unit 3A88, Officer Wood stopped, headed east on 43rd Street at Budlong Avenue. Unit 3A58, Officer Hyde turned west on 43rd Street from Vermont Avenue. The drivers, Officers Wood and Hyde, turned their respective vehicle parking lights on and then off, signaling to one another that they were in position.

Officer Wood double parked his vehicle, headed east in lane E-1 in front of 1046. Officer Hyde double parked, headed west in lane W-1 approximately 60 feet east of 1040. The four officers alighted from their respective vehicles. Officer Wood armed himself with his department-issued shotgun. He did not have his baton. The other three officers were armed with their holstered revolvers and their batons which were carried in their baton rings.

The structures located at 1040 and 1042 comprised two single-story apartment units with a common walkway, providing access to the apartments. The apartments for 1042 are located on the west side of the walkway and 1040 on the east side. The officers noted that there were numerous flood lights located along the walkway, illuminating the sidewalk and the apartment fronts.

Officer Hyde walked south across 43rd Street and turned west on the south sidewalk. He positioned himself at the northwest corner of 1040. Officer Wood walked east on the south sidewalk of 43rd Street and positioned himself at the northeast corner of 1042. Officer Hyde and Wood heard a pounding noise emanating from one of the apartments in the complex. The two officers also heard what they believed to be a male voice chanting (unintelligibly) in a loud voice.

Officer Castruita illuminated shrubs and vehicles on the north side of 43rd Street in search of possible ambush suspects. Officer Shorb also illuminated the front of 1046 whith [*sic*] his flashlight and visually scrutinized the front of the house and shrubs for possible ambush suspects. Finding none, Shorb walked east on the south sidewalk of 43rd Street and assumed a position just west of Officer Wood. Shorb could hear the sound of someone pounding in the apartment complex, however, did not hear the sound of chanting.

Officer Hyde walked in a southwesterly direction and then proceeded in a southerly direction, parallel to the east wall of 1042. Officer Wood walked in a southeasterly direction across the walkway and proceeded in a southerly direction, parallel to the west wall of 1040. The officers paralled [*sic*] each other. Officer Shorb followed Hyde from a distance of approximately 6 feet. Officer Castruita walked south across 43rd Street and followed Officer Wood from a distance of approximately 10 feet. The officers observed Air 70 illuminating the area as they walked south in the walkway.

Officer Hyde continued walking in a southerly direction past apartment #1 and #2. Wood continued in a southerly direction, abreast of Hyde. When Hyde reached a point next to the third apartment south of 43rd Street, he observed that it was apartment #3, the location of their call. There is a small V-shaped alcove which juts inward 4 feet from the east wall of the apartment. The front door is located on the north side of the alcove at a 45-degree angle, affording entry to the living room. A bedroom window is located on the south wall of the alcove. There is a single step in the alcove leading to the front door.

From his position just north of the alcove, Officer Hyde observed that the front door was hinged on the north side

and opened inward. The door was ajar approximately 2 inches. Hyde looked in through the opening and observed a male Negro, whom he later identified as Booker T. Ford, standing in the living room. Ford was attired in blue jockey shorts and black socks. He was facing south and pounding on a door that the officers later determined to be the entrance to the bedroom. Ford's forearms were parallel with the door and he was pounding on the door with clenched fists, yelling something that was undiscernible to the officers.

Officer Wood passed the entrance to apartment #3 and observed Ford inside the apartment. Ford was pounding on what the officer believed to be a wall when actually he was pounding on the bedroom door. Wood crossed the walkway (east to west) and positioned himself just south of the alcove. Officer Shorb positioned himself just north of Hyde. As Shorb reached this location, he observed the curtains part in the window on the south wall of the alcove. He observed a female Negro, later identified as Teri Walker, appear in the window. Her lips were moving, however, the window was closed and he could not discern what she was saying. Hyde's attention was again directed at Ford. He heard a woman's voice, but could not hear what she was saying.

Officer Hyde reached up with his left hand and pushed the front door open. As he pushed the door open, Castruita walked south in the walkway, passing in front of the apartment entrance. He observed Ford standing in the living room, however, he could not determine what Ford was doing. Based upon Ford's observable conduct, his attire and the nature of the call, Officer Hyde anticipated that Ford would resist. He removed his eyeglasses and placed them on the planter bed just north of the entrance to the apartment. He also placed his flashlight beside the glasses.

Officer Hyde stepped onto the alcove porch, remaining just off of the threshold. Officers Wood and Shorb remained

in their respective positions. Officer Castruita walked in a northwesterly direction toward the entrance to the apartment, following Hyde. Ford continued pounding on the bedroom door. As the front door was pushed open, Ford turned his head to the left (east) and looked directly at Hyde. Ford then turned his head to the right and again faced the bedroom door.

Officer Hyde stepped approximately 4 feet into the living room, followed by his partner, Castruita. Castruita stopped just to the left rear side of Hyde. Officer Shorb entered the apartment and positioned himself just to the rear of Castruita. Wood stepped onto the alcove porch and unloaded his shotgun. As the officers reached their described positions, Ford stepped approximately 4 feet backward from the front door in a northerly direction. He turned to his left and faced to the east. He clenched his fists and raised his arms, triceps parallel with the floor. Ford commenced turning clockwise and made two or three rotations and stopped, facing east toward the officers. He continued chanting, his eyes were closed, and he began moving his upper torso forward and backward, bending at the waist.

Teri Walker opened the bedroom door and stepped into the living room. Castruita asked Walker if she had called the police and the nature of the problem. As the officer questioned Walker, he moved from behind Officer Hyde and approached Miss Walker. Walker replied, "He came over, I let him in, then he got weird. I told him to leave and he wouldn't."

Officer Hyde walked in a westerly direction and assumed a position behind Ford. He reached around and grabbed his left and right wrists and brought them back behind Ford's back. Ford took approximately two or three steps forward and managed to jerk his right hand free. Castruita observed that Hyde was having difficulty controlling Ford. He moved

to his right and assumed a position to the suspect's right rear side. Hyde again reached around with his right hand and grasped Ford's right wrist, bringing it back behind Ford's back.

Officer Castruita also grabbed Ford's right wrist. Officer Hyde released his grip on Ford's right wrist and concentrated on Ford's left hand and arm. Officer Castruita placed one handcuff on Ford's right wrist. Castruita then attempted to place the remaining cuff on Ford's left wrist, which Hyde was holding with no success. Ford jerked his right wrist free from Castruita's hold. He swung his right arm up and forward in a counterclockwise motion. Officer Hyde formed the opinion that Ford was attempting to strike him with the loose handcuff.

Officer Hyde released his grip on Ford's left wrist and placed his right forearm against Ford's throat preparatory to assuming a bar-arm control hold. He brought his left hand up, grasping his right hand and completed the hold. Shorb removed his baton from his baton ring and made several thrusting type motions, striking Ford in the abdomen in an attempt to subdue him.

Ford turned to his right and started to rotate his body in a clockwise movement. Hyde maintained his bar-arm control hold. Officer Shorb was afraid that he might strike Hyde with the baton, based upon the movement involved during the struggle. He placed the baton back into the baton ring and reached out in an attempt to grab Ford's forearms. Before Shorb could grasp Ford's arms, Ford grabbed Shorb by his right and left shirt sleeves near the cuffs. The momentum of Ford turning to his right forced Shorb in a westerly direction. Shorb was forced against the refrigerator, which was located on the west wall of the kitchen. Hyde continued to maintain his bar-arm control hold, however, with minimal effect.

Ford turned to his left, moving counterclockwise, still maintaining his hold on Shorb's shirt sleeves. Ford's momentum forced Shorb in a southeasterly direction, causing him to fall against a high chair, which was against the east wall of the kitchen. Castruita moved behind Ford and Hyde. He bent down and grabbed the suspect around the calves of his legs. However, Ford managed to free his left leg. Castruita maintained control of the right leg and pulled Ford's right foot upward. This manuever [*sic*] caused Ford and Officer Hyde to fall to the floor.

Officer Hyde and Ford fell to the floor on their left sides. Hyde's stomach was against Ford's back. He maintained his bar-arm control hold. Hyde placed his right leg over and around Ford's right side. This forced Ford to his left and into a prone position. Hyde followed, lying prone on Ford's back, retaining his bar-arm control hold.

Officer Wood completed unloading his shotgun and placed it against the south wall of the living room. He walked around to the north side of Ford and Hyde. He bent down and placed his legs on the back of Ford's legs to assist Castruita in handcuffing Ford's ankles together. Ford's ankles were too large and the officers were unable to cuff them. (Officer Castruita routinely carries two pairs of handcuffs.)

Ford's left arm was beneath his upper torso and his right arm was out at his right side. Officer Shorb bent down, intending to place his knees on Ford's right forearm. Officer Wood observed that Ford was no longer resisting. He stated, "I think he's out." Officer Shorb told Hyde, "Get off so we can handcuff him." Officer Hyde released his control hold and stood up. Castruita pulled Ford's left arm from under his torso and handcuffed the wrist. He raised the arm and pulled it behind Ford's back. Shorb raised Ford's right arm, and previously handcuffed wrist, and placed it behind

his back. Castruita and Shorb handcuffed the wrists together, utilizing the two pairs of handcuffs. There was one cuff which remained free.

Ford took two or more deep breaths and then appeared to stop breathing. Officer Wood bent down and observed that Ford's left eye was open. He directed the beam from his flashlight into the eye. There was no movement. Wood also could not detect a pulse beat. Officer Wood returned to his vehicle and requested an ambulance and supervisor.

Lighting was good, supplied by a table lamp and overhead kitchen light.

*INJURIES*

R/A #46 received the alarm at 0312 hours and responded to the scene at 0316 hours. Ford was pronounced dead at 0323 hours. The remains were transported to the L.A. County Morgue. On 11-4-75, 0830 hours, L.A. County Autopsy Surgeon Doctor Bucklin performed an autopsy on the remains.

Doctor Bucklin noted abrasion marks on the left side of Ford's neck. There was also hemorrhaging in the larynx. Doctor Bucklin stated, "The injuries are consistent with pressure being applied to the neck area, but do not appear to be severe enough to cause death." No other trauma was noted.

At the time of this report, the cause of death has not been established pending the results of the toxicological examination. However, edema of the lungs was noted which is compatible with a narcotic overdose. There were old hype marks on the inner portion of both arms.

Officer R. Castruita, 17991, was injured during the altercation. Castruita was treated at the California Hospital Medical Center, 1414 South Hope Street, by Doctor Bernes. The doctor described his injury as a contusional injury to

the right knee. An Ace bandage was applied to the injury, and Castruita was placed on light duty for two days.

Officer R. E. Shorb, 20653, was also injured during the altercation. Shorb was treated at the California Hospital Medical Center, 1414 South Hope Street, by Doctor Bernes. The doctor described his injuries as superficial abrasions to the right knee and the right forearm. The injuries were cleansed and medication applied. Shorb was released, "okay for duty."

*NOTIFICATIONS*

On 11-4-75, at 0330 hours, Lieutenant L. Selby, Acting Commanding Officer, and Lieutenant C. A. Higbie, Officer in Charge, Officer-Involved Shooting Investigations, Robbery-Homicide Division, were notified of the incident. They assigned Investigator III M. J. McGann and Investigator II J. L. Mount to the investigation. Lieutenant Higbie and the investigators responded to the scene from their residences. Lieutenant Higbie was in charge at the scene.

*PERSONNEL AT THE SCENE*

Commander H. D. Sanchez, Assistant to Commanding Officer, Operations-South Bureau

*Southwest Area*

Captain S. M. Downing, Commanding Officer, Southwest Area; Captain D. Vincent, Commanding Officer, Operations Division A; *Sergeant R. D. Welts, 11011, 3L150; Sergeant P. C. Agnell, 14098, 3L157; Officer R. C. Hyde, 16896, 3A58; Officer R. Castruita, 17991, 3A58; Officer M. A. Wood, 16655, 3A88; Officer R. E. Shorb, 20653, 3A88; Officer R. J. Taylor, 20063, 3A96; Officer L. Wyeth, 17223, 3A96; Officer G. Bielman, 17198, 3A99; Officer

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*First supervisor at the scene

C. Zeglin, 21063, 3A99; Investigator N. Gilmore, 11618, 3W32; Investigator R. Rysdon, 15149, 3W32.

*Investigative Headquarters Division*

Lieutenant B. Shaw, 10577, 1K10; Investigator H. L. Rowden, 10516, 1K3

*Scientific Investigation Division*

Photos — G. E. Thomas, H9181, 2H21

*Air Support Division — Air 70*

Pilot — R. W. Kreutz, 13398; Observer — D. L. Abbott, 14293

*Los Angeles Fire Department — PA Unit 446*

Driver — O'Leary, #155; Attendant — Ricks, #106

*Los Angeles County Coroner's Office*

J. Decker, J. Njavro, W. R. Rainey

*SUSPECT*

FORD, Booker T., Junior, aka: Thomas Booker Ford, Jr., Booker Tony Ford, Tony Martin, Bobby Ford, James Dennis Walker, James Lucius Moore, James Lusius Moore, Benny DaLion, male Negro, 5'11", 180 pounds, black and brown, dob: 5-27-47, address: 614 West Crest Street, Compton, LA #851002-F, FBI #422310-F, Social Security number 571-74-5939, CII #2-440-293. Coroner's Case #75-13320. Ford has an arrest record dating back to 11-4-63. He has 14 arrests for 459 P.C. Burglary, 5 arrest for 211 P.C. Robbery, one arrest for Assault with Intent to Commit Murder and one arrest for 148 P.C. Resisting Arrest. He has also been arrested for Counterfeiting and served 6 months in County Jail and placed on 3 years probation. He has 2 arrests for 11500 H&S and served 30 days in the County Jail and was placed on 24 months probation. His last arrest occurred on 6-22-75 for 11350 H&S, no dispo-

sition. He was not on probation or parole at the time of this incident. Ford was the subject of two outstanding LAPD traffic warrants. A complete copy of Ford's criminal record is on file in Robbery-Homicide Division.

*EVIDENCE*

Evidence booked in connecting with this incident consists of one steak knife with a 7½-inch overall length, the blade of the knife measures 3⅞ inches. The knife was found in a planter next to the apartment, however, it was not involved in the incident.

*WITNESSES*

*WALKER, Teri*, 1042 West 43rd Street, apartment #3. Walker's statement was tape recorded on tape number 60849.

*NORTHCUTT, Eular*, 1042 West 43rd Street, apartment #2. Northcutt's statement was tape recorded on tape number 60931.

*HUNTER, George*, 1042 West 43rd Street, apartment #4 (apartment manager). Hunter's statement was tape recorded on tape number 60931.

The above witnesses' statements coincide with the Chronological Narrative portion of this report. Their statements are on file in Robbery-Homicide Division.

The surrounding area was canvassed for additional witnesses with negative results.

*COMMUNICATIONS*

Copies of communication tickets pertinent to this incident are on file in Robbery-Homicide Division.

Approved: /s/ C. A. Higbie
Lieutenant C. A. Higbie, Officer-in-Charge
Officer-Involved Shooting Investigations
Robbery-Homicide Division
11-19-75

**Selected Portions of the Autopsy Report of Booker Ford (Exhibit 6).**

AUTOPSY REPORT

No. 75-13320

I performed an autopsy on the body of FORD, BOOKER at DEPARTMENT OF CHIEF MEDICAL EXAMINER-CORONER, 1104 N. MISSION RD., L.A. on NOVEMBER 4, 1975 @0830 Hours.

From the anatomic findings and pertinent history I ascribe the death to: (A) ACUTE CARDIORESPIRATORY ARREST, DUE TO OR AS A CONSEQUENCE OF (B) COMPRESSION OF NECK.

OTHER SIGNIFICANT CONDITIONS — ACUTE HEROIN-MORPHINE INTOXICATION.

*Anatomical Summary:*

1. Pulmonary edema and congestion.
2. Perilaryngeal hemorrhage.
3. Submucosal laryngeal hemorrhage.
4. Old needle tracks, both arms.
5. Fine cutaneous abrasions.

## MEDICAL REPORT

Date 11/4/75; Time 0830 in.

Crypt # 91A; MORTUARY CME. Autopsy PENDING; FINAL ON 12/9/75 Dr. Bucklin.

Part I: Death was caused by immediate cause acute cardiorespiratory arrest.

Due to: Compression of neck.

Part II: OTHER SIGNIFICANT CONDITIONS — CONTRIBUTING TO DEATH BUT NOT RELATED TO THE IMMEDIATE CAUSE GIVEN IN PART I. Acute heroin-morphine intoxication.

Accident.

Operation — No; Evidence of Injury — Yes; At work — No.

Specimens Submitted: Kidney, Liver, Bile, Urine, Stomach.

Suicide note — No. Evidence brought in None.

Physical Description: Age 28; Sex M; Race Neg.; Complexion Dark; Wt. 175 lbs.; Ht. 70 in.; Hair Blk; Teeth U/own L/own; Eyes Brn; Pupils Dil; Scars L. Face, Both Thighs.

Appliances on body, Surgical wounds none noted; Tattoo L. Chest; Hospital Report No; Hospitalized in N/A; Hospital Duration N/A.

For Homi; Information taken by Walter R. Rainey Date 11/4/75.

**Los Angeles Police Department Report on the Death of Edward Dailey (Exhibit 9).**

CONFIDENTIAL

OPERATIONS-HEADQUARTERS BUREAU

The City Attorney of Los Angeles considers this report as highly confidential and a privileged communication between the involved officers and their attorney. Administrative use is limited to concerned staff and command personnel of the Los Angeles Police Department. Any other use is forbidden by the City Attorney.

*PLEASE RETURN THE REPORT TO ROBBERY-HOMICIDE DIVISION AS SOON AS PRACTICABLE.* This report has a registered distribution. The Officer-Involved Shooting Team is responsible for maintaining a record of outstanding reports. The return of this copy of the report will be recorded.

THIS REPORT IS *NOT* TO BE REPRODUCED OR COPIED.

Report of Law Enforcement Activity Related Death: DR 76-705 183; 415 P.C. SUSPECT; DAILEY, Edward D. (DECEASED); Male Negro, 19 years.

Involved Officers: P-2 M. J. APODACA, 21002, 3X53; P-2 P. MENDOZA, 21039, 3X53.

Date and Time of Incident: 10-5-76, 2335 hours.

Location of Incident: 2913 West Florence Avenue.

Area of Occurrence: Southwest Area, R/D 398.

OFFICER-INVOLVED SHOOTING TEAM: INVEST. 2 J. E. COINER, 10482; INVEST. 2 J. L. MOUNT, 12247.

*CONFIDENTIAL*

*THIS REPORT IS FOR THE CONFIDENTIAL USE OF THE CITY ATTORNEY*

To: BURT PINES, CITY ATTORNEY.

Sir:

*PRINTER'S NOTE: the words "Do Not Copy" appear across each page of the original document.

*CHRONOLOGICAL NARRATIVE*

On Tuesday, October 5, 1976, approximately 2300 hours, numerous residents in the 1600 block of West 67th Street observed a male Negro, later identified as Edward D. Dailey, jump up and down on the hood of a Ford pickup with camper attached, California license number L82666. The vehicle was parked in the driveway of 1627 West 67th Street. They later observed Dailey jump up and down on the hood of a blue Rambler station wagon, California license number 621 GIE, parked headed westbound against the north curb in front of 1607 West 67th Street. The residents also observed Dailey running in the street yelling and screaming incoherently.

At approximately 2305 hours, Dailey began kicking and banging on the front door of 1637 West 67th Street, the residence of Mrs. Laverne Brown. Mrs. Brown instructed her son to notify the police. Mr. Charles Williamson of 1719 West 67th Street observed Dailey strike a tree with his fists several times for no apparent reason. Mr. Williamson telephonically notified the Los Angeles Police Department, Communications Division of the occurrence. The complaint board received Williamson's call at 2304 hours. Mrs. Mabel Harper of 1630 West 67th Street observed Dailey on Mrs. Brown's front porch and she telephonically notified the Los Angeles Police Department's Communications Division. The complaint board received Mrs. Harper's call at 2305 hours. One additional unidentified person telephonically notified the L.A.P.D. complaint board at 2305 hours of a 390 down in the 1600 block of 67th Street.

At 2305 hours, Southwest Area, P.M. Watch, uniformed Officers M. J. Apodaca, 21002, driver, and P. Mendoza, 21039, were working black and white unit 3X53. The officers monitored an all units radio call, "415 man jumping up and down on vehicles at 67th and Denker, code 2."

The officers responded southbound on Denker to 67th Street. As they approached 67th Street, both officers observed an unidentified male and female Negro standing on the sidewalk at the northwest corner of 67th and Denker. They were motioning with their hands; indicating to the officers they were in need of assistance. The officers responded to their location and stopped, headed south at the west curb of Denker, slightly north of the northwest corner of 67th and Denker. The male Negro stated, "There is some crazy guy around the corner (indicating west on 67th Street) by the camper." The female Negro stated, "The guy grabbed me by the front of my collar when we were walking down the street." The male Negro stated, "I told the man to leave her alone and the man released his grip and walked away." Officer Mendoza advised the couple to remain at the northwest corner of 67th and Denker while the officers searched the area for the suspect.

Officer Apodaca drove west on 67th Street. Both officers observed numerous persons on the north and south sidewalk of 67th Street. Several of the persons pointed in a northwesterly direction and stated, "He's over there by that stucco house by the camper" (indicating 1627 West 67th Street). Apodaca parked the police vehicle westbound against the north curb in front of 1637 West 67th Street.

Southwest Area, Special Problems Units, 3Z85, manned by Officers D. Gallegos, 17431, and J. Onorato, 17242, and 3Z86, manned by Officers W. E. Rugh, 16071, D. C. Rogers, 16637, and T. G. Minton, 20719, monitored the all units radio call at 67th and Denker. The officers were attired in plainclothes and driving unmarked police vehicles. Officer Gallegos and Onorato responded to the location and parked their vehicle westbound against the north curb behind Apodaca's and Mendoza's vehicle. Officers Rugh, Rogers, and Minton responded to the location and stopped their

vehicle headed west in the westbound lane of 67th Street, adjacent to Apodaca's and Mendoza's vehicle.

Officers Apodaca and Mendoza observed a female Negro, later idenitifed as Laverne Brown, standing in the doorway of 1637. Both officers observed that 1637 is a one-story stucco residence fronting onto 67th Street. The front yard is enclosed by a chain link fence. A north-south driveway parallels the east side of the house. The officers further observed a black over white Buick Riviera, California license number 461 BSM, parked headed north in the driveway adjacent to the house.

Officers Apodaca, Mendoza, Gallegos, and Onorato exited their vehicles and walked north toward the front of 1637. Mrs. Brown stated, "The guy is right there." She pointed in an easterly direction towards the Buick Riviera parked in the driveway on the east side of the house. Mrs. Brown stated, "He's lying there on the car. He tried to kick my door in because I wouldn't let him in." Apodaca and Mendoza, from the front yard of 1637, observed Dailey sitting on the hood of the vehicle. He was facing north with his back pressed against the windshield of the vehicle. His legs were outstretched in front of him (north) on top of the hood. Officers Gallegos and Onorato, from their position on the sidewalk near the driveway, were only able to observe the back of Dailey's head, which was visible above the roof of the vehicle. Officer Mendoza illuminated the suspect with his flashlight. Mrs. Brown continued pointing toward the vehicle from the doorway of her residence. The officers observed that Dailey made no sound or movement and appeared to be unconscious or asleep.

Mendoza and Apodaca exited the yard and walked east to the Buick. They turned left and walked north along the left side of the vehicle. They positioned themselves at the rear of the left front fender, facing in a northeasterly direc-

tion towards Dailey. Gallegos and Onorato walked north along the right side of the vehicle and positioned themselves at the rear of the right front fender, facing in a northwesterly direction. Officer Gallegos stated to Dailey, "Let me see your hands." There was no response. Gallegos repeated himself and again, there was no response. Apodaca observed Dailey's left hand was at his left side and partially beneath his left thigh. There was nothing in his hand. Mendoza stated, "The left side is clear. There is nothing in his hand." Gallegos stated, "The right side is clear." Mendoza walked to the front of the vehicle and faced directly south towards Dailey. Apodaca moved to his left (north) until he was adjacent to Dailey's left side, facing east.

Dailey made no sound or movement and continued to appear to be unconscious or asleep. Officer Apodaca placed his left hand around Dailey's left wrist and pulled Dailey's arm downward and forward towards the front of the vehicle. Dailey offered no resistance, thus Apodaca's movement caused Dailey's body to turn to the left. Dailey slid off the left front fender of the vehicle onto his feet then down to his knees, facing south. Officer Apodaca maintained his hold on Dailey's left wrist. Dailey fell forward into a prone position. His head was to the south and his feet to the north. The left side of his body paralleled the left front fender of the vehicle. Apodaca released his hold on Dailey's left wrist and placed his right hand on Dailey's left wrist and his left hand on Dailey's right bicep and placed both of Dailey's arms behind his back. Officers Mendoza, Gallegos and Onorato approached Apodaca's position.

Officer Gallegos handcuffed Dailey's hands behind his back and Officer Mendoza assisted by holding Dailey's legs. Apodaca and Mendoza assisted Dailey into an upright position. Dailey could not stand unassisted. The officers formed the opinion Dailey was under the influence of a

dangerous drug or narcotic due to the absence of the odor of alcohol on Dailey's breath or person. Dailey was unsteady on his feet and appeared to be in a stuporous condition. Mendoza positioned himself to the left of Dailey and grasped his left arm with his right hand and applied a rear wrist lock. Apodaca positioned himself to the right of the suspect and grasped Dailey's right bicep with his right hand. Apodaca and Mendoza assisted Dailey to their vehicle. As they reached the vehicle, they positioned Dailey with his back against the right side of their vehicle. Both officers released their hold on Dailey at which time it appeared Dailey was going to fall to the ground. Apodaca again held Dailey to prevent him from falling. Officer Mendoza advised unit 3Z86, Officers Rugh, Rogers, and Minton, who had remained seated in their vehicle, that Dailey was possibly under the influence of a dangerous drug or narcotic and they were going to book him. The officers, after being apprised of the situation, departed the scene.

Officer Mendoza returned to Apodaca's and Dailey's position. Apodaca performed a cursory search on the person of Dailey and placed him in the right rear seat of the police vehicle. Mendoza seated himself in the left rear passenger's seat of the vehicle, and Apodaca seated himself in the driver's seat of the vehicle. Officers Gallegos and Onorato entered their vehicle and departed.

Officer Apodaca drove east on 67th to Denker. The officers observed the unidentified male and female Negro, whom they had conversed with prior to confronting Dailey, standing on the north sidewalk of 67th Street, east of Denker. Apodaca continued east and stopped at the north curb of 67th, adjacent to the couple. Mendoza exited the vehicle and approached the couple. Mendoza asked the woman if she was hurt. She stated, "No, I am not injured." Mendoza inquired if she wished to pursue the matter. She

stated, "No, I do not. I am not hurt." The male Negro further stated, "She's all right. We don't want to do anything about it." Mendoza asked the woman if she recognized Dailey as the person who accosted her earlier in the evening. She stated, "Yes, that's the person that grabbed my blouse."

Mendoza, after terminating his conversation with the couple, reentered the left rear passenger's seat of the vehicle. Apodaca backed west on 67th to Denker, he turned left and drove north on Denker. Apodaca turned left, (west) on Gage, then right (north) on Western. It was the officer's intention to proceed to Southwest Station and book Dailey. As the officers traveled north on Western, Apodaca advised Mendoza they should take Dailey to Daniel Freeman Hospital for medical treatment prior to booking. It was Apodaca's opinion that the jailers at Southwest Area Station would not accept Daily in his present condition and would require an approval for booking from a doctor at Daniel Freeman Hospital.

As the officers approached 58th Street, Apodaca executed a U-turn and proceeded south on Western. Apodaca broadcast, "Show 3X53 handling the call at 67th and Denker, show us out to Daniel Freeman Hospital and reassign our calls."

Immediately after Apodaca's broadcast, Dailey commenced shouting incoherently and unintelligibly. Apodaca drove south on Western to Florence Avenue where he turned right (west). Upon approaching 4th Avenue, Dailey again began shouting incoherently and unintelligibly. He drew his legs upward towards his abdomen and began kicking the back of the right front passenger's seat. Mendoza advised Dailey to calm down and not get excited, they were taking him to a doctor for help. Dailey moved the upper portion of his torso backward and forward and from right to left,

however, he continued facing toward the front of the vehicle.

Dailey continued kicking the back of the seat and shouting incoherently. He turned slightly to his left and began kicking the rear of the driver's seat of the vehicle, however, he did not strike Officer Apodaca. Mendoza, fearing Dailey would injure himself or his partner, decided to place a bar-arm control hold on Dailey to subdue him. Mendoza, preparatory to assuming the hold, turned to his right (north), facing Dailey. He drew his legs up underneath him and assumed a kneeling position on the seat. Dailey was seated facing north, his knees were still drawn upward towards his abdomen and his back was to Mendoza. Mendoza placed his left forearm across Dailey's throat and grasped his left hand with his right hand, completing the bar-arm control hold. Mendoza pulled Dailey backward until Dailey's head was resting against the officer's chest. Mendoza advised Apodaca to stop the vehicle. Apodaca stopped the vehicle westbound against the north curb of Florence Avenue in front of 2913. Dailey continued kicking and shouting, attempting to free himself. Mendoza maintained the bar-arm control hold for approximately 10 seconds at which time Dailey became passive and ceased struggling. Dailey appeared to be unconscious at this time.

Mendoza released the hold, however, he placed his left forearm across Dailey's chest and retained his grip on his left hand with his right hand. Mendoza maintained his prior described position in the seat in the event Dailey again became combative. Officer Apodaca broadcast, "3X53, any unit in the area of the 2900 block of Florence Avenue, meet me code 2 with plastic handcuffs." Communications received this broadcast at 2331 hours.

Officer Apodaca exited the vehicle and walked to the right rear passenger's door. He observed Dailey's left leg

resting on top of the right front passenger's seat and his right foot was placed against the right rear passenger's door window. Apodaca opened the door and placed both of Dailey's feet onto the right rear seat and closed the door. Dailey suddenly began yelling, and kicking the right rear door and window. Mendoza immediately placed his right arm across Dailey's throat and grasped his right hand with his left hand, and completed the bar-arm control hold in an attempt to subdue Dailey. Mendoza applied the hold for approximately five seconds. Dailey again became passive and ceased struggling. Dailey appeared to be unconscious.

Officer Apodaca broadcast, "Has any unit acknowledged to meet me with plastic handcuffs at my location, code 2?" Officer Mendoza observed what appeared to be saliva emitting from Dailey's mouth and mucus from his nose. Mendoza released his hold and placed his left arm across Dailey's chest to support him. Apodaca supplied Mendoza with paper towels which Mendoza utilized to wipe Dailey's face. Mendoza, after releasing his hold, exited the vehicle and Apodaca assumed Mendoza's prior described position in the event Dailey became combative. Mendoza, after exiting the vehicle, walked to the right rear passenger's door, opened it and placed his hands on Dailey's legs.

At approximately 2331 hours, Southwest Area, P.M. Watch units 3A99, Officers J. J. Harris, 12640, and O. Dobine, 15337, and 3A71, Officers J. J. Reese, 20427, and J. A. Robinson, 16299, monitored Communications' request for any Southwest unit with plastic cuffs meet 3X53 in the 2900 block of Florence, code 2. The officers responded to the scene and parked westbound against the north curb of Florence behind 3X53.

The officers exited their respective vehicles and approached Officer Mendoza. Officer Harris supplied Mendoza with a pair of plastic handcuffs. Apodaca placed the

suspect in a supine position on the rear seat of the vehicle; his head was to the south and his feet were to the north. Apodaca exited the vehicle and walked to the right rear passenger's door of the vehicle where he obtained the plastic handcuffs from Mendoza and placed them around Dailey's ankles.

Officer Apodaca stated, "Hey, is this guy breathing?" Officer Reese replied, "I don't think so." Officer Reese proceeded to the left rear passenger's door of the vehicle and opened it.

Reese attempted to determine if Dailey was breathing with negative results. Officers Reese and Dobine checked Dailey's carotid artery on the left side of his neck for a pulse. They were unable to feel a pulse beat. The officers removed Dailey from the vehicle and placed him in a supine position on the north sidewalk of Florence, west of a driveway located on the east side of 2913. Dailey's head was to the east and his feet were to the west.

Subsequent to placing Dailey on the sidewalk, Officers Reese and Robinson, assisted by Officers Apodaca and Mendoza, administered (CPR) cardiopulmonary resuscitation to Dailey. Officer Dobine returned to his police vehicle and requested an ambulance and a supervisor. Communications received this request at 2337 hours.

RA unit #66 responded to the scene and transported Dailey to Daniel Freeman Hospital, 333 North Prairie Avenue, Inglewood, for emergency medical treatment. Officers Dobine and Reese accompanied Dailey in the ambulance to the hospital. Dailey was subsequently pronounced dead at Daniel Freeman Hospital by Doctor Barrett at 0030 hours on 10-6-76.

*INJURIES*

On 10-5-76, Los Angeles Fire Department Rescue Unit #66 received the alarm at 2332 hours and arrived at the scene at 2335 hours. Upon observing no vital signs, RA 66 transported Edward Dailey to Daniel Freeman Hospital, 333 North Prairie Avenue, Inglewood, where he was treated by Doctor Barrett.

Doctor Barrett made the following notation in his report: "In custody, possible angel dust inhalation. Cardiorespiratory arrest in back of police car, CPR instituted, paramedic found patient agonel rhythm with vomitus in mouth. CPR in field and at emergency room, not effective. Pupils fixed and dilated, became asystole." Dailey was pronounced dead at 0030 hours, 10-6-76, by Doctor Barrett.

On 10-6-76, an autopsy was performed on the remains of Edward Dailey (Coroner's Case #76-12099) by Doctor Choi, Deputy Medical Examiner for Los Angeles County. Doctor Choi's preliminary findings are as follow: "No sign of trauma on body or to neck organs — aspiration noted in stomach, lungs and airways — petechial present in eyes." Doctor Choi added that the aforementioned conditions are indicative of drug induced deaths or strangulation. Final cause of death will not be determined until completion of all toxicological examinations.

*NOTIFICATIONS*

On Tuesday, October 5, 1976, 2330 hours, Captain Gene Rock, Commanding Officer, Lieutenant R. Lewis, Officer-in-Charge, Robbery Specials, and Investigator III D. R. Ham, Acting Officer-in-Charge, Officer-Involved Shooting Investigations, Robbery-Homicide Division, were notified of the incident. Investigator Ham assigned Investigators

J. E. Coiner and J. L. Mount to investigate. Lieutenant Lewis and the investigators responded to the scene from their residences.

*PERSONNEL AT THE SCENE*

Captain J. L. Salvino, Operations Duty Officer

*Operations — South Bureau*

Commander G. W. Lewis, Assistant to Commanding Officer; Captain W. M. Rathburn, Support Division Captain; Lieutenant 1 K. Ross, S.I.T.: Investigator 2 D. Stachowski, 11323, Homicide Investigation; Investigator 1 J. Anslow, 11706, Homicide Investigation; Sergeant G. Thomas, 11562, 3L240; *Sergeant W. Wiggins, 12186, 3L250; Sergeant R. C. Houston, 16041, 3L250; Sergant J. Staugaard, 15801, 3L340; Policeman 3 S. M. Fisher, 15963, 3A58 (A.M. Watch); Policeman 2 E. M. Cookson, 21183, 3A58 (A.M. Watch); Policeman 3 G. W. Day, 15759, 3A58 (P.M. Watch); Policeman 1 R. San Roman, 21594, 3A58 (P.M. Watch); Policeman 2 K. Ackerman, 20943, 3A65; Policeman 2 R. Monroy, 21041, 3A65; Policeman 3 J. A. Robinson, 16299, 3A71; Policeman 2 J. J. Reese, 20427, 3A71; Policeman 3 E. White, 17772, 3A96; Policeman 3 Z. Pavelic, 20837, 3A96; Policeman 3+1 J. J. Harris, 12640, 3A99; Policeman 3 O. Dobine, 15337, 3A99; Policeman 2 M. Apodaca, 21102, 3X53; Policeman 2 P. Mendoza, 21039, 3X53; Policeman 2 J. Onorato, 17242, 3Z85; Policeman 2 B. Gallegos, 17431, 3X85; Policeman 2 W. Rugh, 16071, 3X86; Policeman 2 D. C. Rogers, 16637, 3X86; Policeman 2 P. G. Minton, 20719, 3Z86.

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*First uniformed supervisor at the scene

*Investigative Headquarters Division*

Lieutenant M. P. Shea, 7620, 1K20; Investigator 1 W. Tusan, 10346, 1K3; Policeman 2 K. L. Jackson, 14605 1K3.

*Scientific Investigation Division*

G. Thomas, H9181, Photos

*Los Angeles Fire Department — RA 66*

Driver — D. VanStralen, No. 8; Attendant — J. Manger, No. 139.

*Los Angeles County Coroner's Office*

D. Messerle, No. 321.

*SUSPECT*

DAILEY, Edward Delawrence, male Negro, 19 years, DOB: 4-28-57, 5'11", 160 pounds, black and brown, address: 8614 Prince Avenue, Los Angeles, phone: 588 2080, LA #1395031-D, Social Security number 551-02-3987, California driver's license number N3474741. Dailey's arrest record indicates one prior arrest which occurred on 3-13-75 for 602 WIC, 11357 H&S, Possession of Marijuana, disposition, released to parents.

*EVIDENCE AND VEHICLE*

Not applicable.

*WITNESSES*

Members of Southwest Division patrol and investigative officers canvassed the neighborhood wherein the initial contact of the subject was made by the responding officers. The below listed witnesses observed and/or heard the actions of Edward Dailey prior to and at the time of officers' presence on 67th Street. Their statements are consistent with the Chronological Narrative of this report. Copies of their

written statements are on file in Robbery-Homicide Division.

In addition, there is a list of addresses on West 67th Street where there was no response. This list is on file in Robbery-Homicide Division.

*BROWN, Laverne,* 1637 West 67th Street, 778 4736.

*BRANCH, Michael,* (16 years), 1641 West 67th Street, 750 1694.

*ELMER, Williams,* 1634 West 67th Street, no phone.

*MAYWEATHER, Vera,* 1631 West 67th Street, 752 3443.

*ROBINSON, LURLENE,* 1625 West 67th Street, 752 5025.

*HARPER, Mabel,* 1630 West 67th Street, 778 6780.

*RAMSEY, Bernice,* 1626 West 67th Street, 778 0724.

*WILLIAMSON, Charles,* 1719 West 67th Street, 759 2650. Made original telephone call to Police Department.

*TAYLOR, A.,* 1615 West 67th Street, 971 4578.

*COLLINS, Mr. and Mrs.,* 1607 West 67th Street, 778 6655.

*WHITFIELD, Mrs.,* 1601 West 67th Street, 750 0616.

The below listed persons were contacted on 67th Street and stated they neither saw nor heard the subject.

*RICHMAN, M.,* 1659 West 67th Street.

*MC CLOSKEY, C.,* 1657 West 67th Street.

*HUGHES, T. J.,* 1653 West 67th Street.

*DOWDRILL, R.,* 1645 West 67th Street.

*DUBOSE, B.,* 1600 West 67th Street.

*DOMINGUEZ, P.,* 1636 West 67th Street.

*KEATON, E.,* 1648 West 67th Street.

*RICHARDSON, Tony,* 1607 West 67th Street.

The below listed witnesses were interviewed by Southwest Investigators J. Anslow, 11706, and D. Stachowski, 11323. The witnesses reside in the vicinity of the 2900 block

West Florence. Their statements are contained on tape number 65640. Copies of their statements are on file in Robbery-Homicide Division. Their statements are consistent with the Chronological Narrative of this report.

*TORREY, Fannie*, 7053 South 7th Avenue, home phone: 750 3341, business phone: 643 2783.

*BOYDE, Evey*, 2909 West Florence, apartment 3, phone: 759 2792.

*MALVEAU, Clara*, 2911 West Florence, phone: 750 3824.

*COSTELLO, Elberta*, 2915 West Florence, phone: 778 6030.

*HOBDY, Vernon*, 2919 West Florence, phone: 752 9380.

*LEWIS, Ina*, 2906 West Florence, apartment 1, no phone.

*SMITH, Mary Lou*, 2906 West Florence, apartment 3, no phone. This witness stated she didn't see nor hear the subject.

*WATTS, Josephine*, 2906 West Florence, apartment 2. This witness stated she did not see nor hear the subject.

2906 West Florence, apartment 4, no response.

*CUSHEN, Jim*, 2914 West Florence, phone: 759 1279. This witness did not see nor hear subject.

*COMMUNICATIONS*

Copies of communication tickets relative to this incident are on file in Robbery-Homicide Division.

Approved: /s/ D. R. Ham,
Investigator III D. R. Ham, 5621
Acting Officer-in-Charge
Officer-Involved Shooting Investigations
Robbery-Homicide Division
November 2, 1976

**Selected Portions of the Autopsy Report of Edward Dailey (Exhibit 8).**

CASE REPORT.

Tape # 3-34A; Start 1719; End not stated.

Reported as: Accident, Homicide, In Custody; Officer involved

Case No. 76-12099; Taken by Bodley; Phone at Scene: 674-7050.

Post Mortem at CME-Coroner.

Name of Deceased — Edward Delawrence Dailey; Date of Death — 10-06-76; Hour — 0030.

Sex — Male; Color or Race — Negro; Date of Birth — 04-28-57; Age — 19 years.

Name and Birthplace of Father — Theodore R. Dailey.

Citizen of what Country — U.S.A.; Social Security Number: 551-02-3987; Married, Never Married, Widowed, Divorced (Specify) — Never Married; Name of Surviving Spouse — None.

Place of Death — Daniel Freeman Hospital; Street Address — 332 N. Prairie Avenue; Inside City Corporate Limits — Yes; City or Town — Inglewood; County — Los Angeles.

Usual Residence — 8614 Prince Avenue; Inside City Corporate Limits — No; City or Town — Los Angeles; County — Los Angeles; State — Ca.

Reported by Inv. Coiner; Address L.A.P.D., RHD; Phone 485-2531; Date 10-06-76; Time 0240 hours; Pronounced Dead by Maxine Barrett, M.D.

Investigating Agency CME-Coroner/L.A.P.D., RHD; Officer Invs. Coiner/Mount; Date 10-05-76; Time ?; Hospital No. 703620.

Next of Kin Theodore Dailey; Address 8614 Prince Avenue, Los Angeles, Ca.; Relationship Father; Phone 588-2080; Notified by LASO (attempt'g); Date and Time 10-06-76.

Personal I.D. By: Hospital ID-Visual.

Prints — yes; Properly — yes; Clothing — yes; Door sealed — no; Weight — 160; Height — 71½ in; Hair — blk; Eyes — bro; Teeth — U-own; L-own; Mustache — none; Beard — none; Tattoo — none obs; Deformity — none obs; Body — unembalmed; Condition — viewable. Brought in by Messerle; Date and Time 10-06-76 0405 hours. /s/ Daniel A. Messerle, Deputy

Specify — Homicide/Accident? Place of Injury — street; Injury at Work — no; Date of Injury — 10-05-76; Hour — 2340; Place of Injury — 2909 W. Florence Avenue, Los Angeles; Distance From Place of Injury to Usual Residence Item 19 — 15 miles.

Certificate issued: To Mortuary Deferred By WJ 10-8-76.

AUTOPSY REPORT

No. 76-12099

I performed an autopsy on the body of DAILEY, Edward D. at DEPT. OF CHIEF MEDICAL EXAMINER-CORONER, 1104 N. MISSION RD., L.A. ON OCTOBER 6, 1976 @ 1000 hours.

From the anatomic findings and pertinent history I ascribe the death to: (A) ASPHYXIATION. Due to or as a consequence of (B) NECK RESTRAINT PROCEDURE FOR ABNORMAL BEHAVIOUR ASSOCIATED WITH PHENCYCLIDINE USE. Other significant conditions — ASPIRATION OF VOMITUS. SICKLE CELL DISORDER.

*Anatomical Summary:*

I. Acute passive congestion of visceral organs. II. Aspiration of vomitus. III. Petechial hemorrhage in conjunctiva of eyes. IV. Congenital hypoplasia of right kidney.

**Los Angeles Police Department Report on the Death of Alvin Whitehead (Exhibit 11).**

CONFIDENTIAL

OPERATIONS-HEADQUARTERS BUREAU

The Chief of Police considers this report as highly confidential. Administrative use is limited to concerned staff and command personnel of the Los Angeles Police Department. Any other use if [*sic*] forbidden by the City Attorney.

*PLEASE RETURN THE REPORT TO ROBBERY-HOMICIDE DIVISION AS SOON AS PRACTICABLE.* This report has a registered distribution. The Officer-Involved Shooting Team is responsible for maintaining a record of outstanding reports. The return of this copy of the report will be recorded.

THIS REPORT IS *NOT* TO BE REPRODUCED OR COPIED.

Robbery-Homicide Division Report of in-Custody Death: DR 78-400 703; 242b P.C. SUSPECT; WHITEHEAD, Alvin L. (DECEASED); Male Negro, 37.

Date and Time of Occurrence: February 1, 1978, 1320 hours.

Location of Occurrence: 150 North Los Angeles Street, Jail Division.

Area of Occurrence: Central Area; R/D 100.

Officer-Involved Shooting Team. INV. III R. L. CALKINS, 7287; INV. II W. A. WELCH, 12185.

*CONFIDENTIAL*

*THIS REPORT IS FOR THE CONFIDENTIAL USE OF THE CHIEF OF POLICE.*

To: DARYL F. GATES, CHIEF OF POLICE

Sir:

*CHRONOLOGICAL NARRATIVE*

On Wednesday, February 1, 1978, shortly after 1100 hours, Alvin L. Whitehead left his residence at 1210 West 71st Street, with his 21-month-old step-grandson, Seanarnetee Ettress. Whitehead's exact destination was, and is, unknown; however, his wife, Rose Whitehead, assumed he was taking the child for a walk to P-J Liquor Store, 1335 West Florence Avenue.

At 1220 hours, South Traffic Division uniformed, two-wheeled motorcycle Officers J. D. Chambers, 14898, unit 12M88, and J. A. Bennett, 14809, unit 12M89, were proceeding east on Florence approaching Western Avenue in the eastbound number two traffic lane. The officers observed Whitehead carrying Ettress, walking west in the southern crosswalk, crossing Western Avenue.

The officers intended to negotiate a right-hand turn to proceed south on Western Avenue. Whitehead approached Officer Chambers who had stopped his motorcycle immediately north of the south crosswalk on Western Avenue. Whitehead stated to the officer that he had found a lost child, indicating Ettress. Officer Chambers directed Whitehead to the curb at the southwest corner of the intersection. The officers parked their motorcycles in the northernmost driveway of the Shell service station at the southwest corner. Their batons remained affixed to their motors.

Officer Chambers requested a 77th patrol unit via Communications frequency 8 to respond to their location to handle the found child investigation. This transmission was received at 1221 hours. The officers alighted from their motorcycles, and Chambers began to interview Whitehead relative to his identity and the circumstances surrounding the found child. Officer Chambers commenced taking notes which he recorded in his field officer's notebook. It was

Officer Chambers' intention to relay this information to the patrol unit to aid in their investigation.

Since their initial contact with Whitehead, the officers noted that he was perspiring profusely, his body was trembling, his eyes were glassy and he appeared disoriented. Upon further questioning, Whitehead related to Chambers that he found the child at 1210 West 71st Street; that the child's name was Shantee Ettress; that the mother's name was Rose Whitehead, and that his name was Alvin Whitehead. Whitehead then stated that he really did not know who he was because he was "high on angel dust." Chambers, upon hearing Whitehead's admission of using angel dust (phencyclidine), became apprehensive. He returned to his motorcycle and, via his radio, requested the patrol unit which had been assigned to their location to respond code 2.

Uniformed Officers J. B. Jeffers, 15974, and T. M. Sweet, 16648, unit 12A35, 77th Area, were seated in their vehicle which was parked in the parking lot of Boys Market at the southeast corner of Manchester and Western. Sergeant R. O. Harsma, 12870, 12L140, had also parked at that location. The officers were conversing with the sergeant when they received the radio call to meet the motor officers with a found child at Florence and Western Avenue. Officer Sweet acknowledged the call at 1221 hours. Officer Jeffers drove out of the parking lot and turned north onto Western Avenue. When the officers were in the vicinity of 79th Street, Communications advised them to make their call "code 2." This was acknowledged by Officer Sweet at 1223 hours.

Upon their arrival at Florence Avenue (total distance of 1.1 miles), the officers turned into the parking lot of the Shell service station at the southwest corner. Officer Jeffers parked the vehicle headed south, approximately 60 feet

south of Florence Avenue, and 20 feet west of the we : curb of Western Avenue. Sergeant Harsma, who had followed Officers Jeffers and Sweet, also parked his vehicle in the service station lot, facing west approximately 30 feet north of Jeffers' vehicle.

Officers Jeffers and Sweet alighted from their vehicle and were approached by Officer Chambers. Chambers began to relate the incident to Jeffers as Sweet walked to the rear of their vehicle where Officer Bennet and Whitehead were standing. Whitehead had placed Ettress on the ground, and the child was standing at the rear of the vehicle, adjacent to Whitehead. Officer Sweet, upon exiting the police vehicle, removed his baton from the holder in the door and was carrying it in his right hand. (Officer Sweet is left-handed.) Jeffers' baton remained in the door holder.

As Officer Sweet approached Officer Bennett and Whitehead, Whitehead began to walk in a southwesterly direction, away from the officers.

After proceeding approximately 6 feet, Whitehead turned and walked back to join the officers near the right rear portion of the police vehicle. Prior to any conversation between Officer Sweet and Whitehead, Whitehead suddenly turned to his right (clockwise), bolted and ran in a northwesterly direction. After running approximately 6 feet, he whirled to his right 180 degrees and ran in a southeasterly direction toward Sweet. Whitehead was swinging both of his arms, fists clenched, and, upon reaching Sweet, struck him on the upper left shoulder and neck with his right fist. Officer Sweet, who had not yet placed his baton in the baton ring, raised his baton in front of his body at an approximate 45-degree angle. The officer attempted to block additional blows being directed at him by the suspect.

Whitehead then backed away from Officer Sweet approximately 3 feet with his hands raised in front of him with clenched fists in a pugilistic fighting stance. Officer Bennett, observing Whitehead's actions, ran to Sweet's assistance. Bennett approached Whitehead from the rear, placing his right arm around Whitehead's neck in a bar-arm control hold. Officers Chambers and Jeffers, observing the altercation, ran to the assistance of the other officers.

Officer Sweet grabbed Whitehead's right wrist and right elbow. Officer Jeffers grabbed Whitehead's left wrist and left elbow. Officer Chambers grabbed Whitehead around the legs. Bennett held the bar-arm control hold for approximately 15 to 20 seconds. Subsequent to the application of the hold, Officer Bennett heard a sound that he described as a "snap" or a "crack" emanating from Whitehead's neck area; however, Whitehead remained conscious and continued to struggle. The four officers then forced Whitehead to the ground into a sitting position.

Whitehead, who had not been rendered unconscious, momentarily ceased struggling while in a sitting position. The officers rolled him into a prone position and Officer Sweet handcuffed his hands behind his back. Sweet and Jeffers then assisted Whitehead to his feet and walked him 5 feet to their vehicle. Sweet opened the right rear door and Officer Chambers ordered the suspect into the vehicle. Whitehead complied, seating himself in the right rear seat. Sweet positioned himself in the left rear seat and Jeffers sat in the driver's seat.

Officer Sweet wedged his baton between the back portion of the front seat and the front of the rear seat next to his left side, adjacent to the left rear door.

Sergeant Harsma observed the altercation and had taken custody of the child. He instructed Officers Jeffers and

Sweet to transport Whitehead to 77th Street station for booking on a charge of 242b P.C., Battery on a Peace Officer. Officer Chambers informed the sergeant that the child possibly lived at 1210 West 71st Street. Sergeant Harsma instructed Chambers and Bennett to follow him to that location in an attempt to locate the family of the child. Sergeant Harsma and the motor officers went to the aforementioned address and, upon knocking on the door, received no response. Sergeant Harsma, Bennett and Chambers then proceeded to 77th Street Station with the Child.

Officers Jeffers and Sweet, upon leaving the southwest corner of Florence and Western Avenue, proceeded south on Western Avenue. It was Officer Jeffers' intention to turn east on 76th Street and drive directly east to the 77th Station. However, as they exited the parking lot, Whitehead began screaming and rocking back and forth in the rear seat. He was screaming, "I am Martin Luther King. Eat pork, and wash it first. I'm black, and Jesus. I'm coming home." He repeated these phrases and began chanting incoherently.

It appeared to the officers that Whitehead had become more violent, and was completely disoriented and irrational. Officer Jeffers was very concerned for his partner's safety. He readjusted the rear-view mirror so he could observe the suspect and his partner in the rear seat. As a result of this distraction, Jeffers passed 76th Street. He continued to the next signal-controlled intersection which was 79th Street. (79th Street and Western Avenue is .6 mile south of Florence and Western.) Jeffers turned left and continued east to New Hampshire (.9 mile). Jeffers then turned south to 81st Street (.1 mile). He then turned east to Vermont Avenue (.2 mile).

Officer Jeffers turned left on Vermont and proceeded north to 76th Street (.4 mile). Whitehead began kicking his feet and raising his body from the seat into an almost horizontal position with his shoulders on top of the rear seat.

The officers continued in their efforts to verbally calm Whitehead to no avail. As Whitehead continued kicking and screaming, Officer Sweet informed Jeffers that he could no longer control Whitehead. (Officer Sweet was eluding [*sic*] to his unsuccessful attempts to prevent the suspect from kicking and to force him back down in the seat from the aforementioned horizontal position.) Whitehead had placed his feet over the back of the front seat and was kicking at Jeffers. On one occasion, he kicked Jeffers in the right shoulder with his left foot.

Officer Jeffers turned right onto 76th Street and stopped the vehicle at the south curb approximately 35 feet east of Vermont Avenue. Jeffers leaned to his right and unlocked the right rear door. He then alighted and ran around the rear of the vehicle to the right rear door to assist Officer Sweet. Whitehead continued kicking and was now leaning against the inside right rear door. When Jeffers opened the door, Whitehead's upper torso fell partially out of the vehicle with his back to Jeffers. Jeffers placed his left arm around Whitehead's neck in a bar-arm control hold and knelt down; his right knee was on the pavement. Officer Sweet was attempting to grasp and control Whitehead's flailing feet. Once the suspect was controlled, it was the officer's intention to place him on the rear floor of the vehicle.

Seventy-seventh Street Area Special Problems Unit 12Z61, manned by uniformed Officers J. L. Mulford, 17314, the driver, H. R. Compton, 17169, right front passenger, and M. G. McAnear, 17349, right rear passenger, were proceeding south on Vermont Avenue, approaching 79th Street. The officers observed unit 12A35 proceeding north on Vermont Avenue at 79th Street. As the two units passed, the three officers observed Whitehead in the rear seat of unit 12A35. They observed the suspect straggling and heard him screaming unintelligibly. Officer Compton

advised Mulford to turn around and follow the officers in unit 12A35. Upon their arrival at 76th Street, they observed unit 12A35 parked at the south curb, headed east, just east of Vermont on 76th Street. They observed Officer Jeffers on the outside of the vehicle by the right rear door. Officers Jeffers and Sweet were struggling with the suspect in the rear seat.

Unit 12Z61 continued north to 75th Street, made a U-turn and proceeded south to 76th to assist unit 12A35. Officer Mulford turned left (east) on 76th Street and parked the police vehicle in the street adjacent to unit 12A35.

Officer Mulford alighted from his vehicle and ran to the left rear door of Officer Jeffers' vehicle. Mulford opened the door, entered, and grabbed Whitehead's flailing feet. Officer Compton alighted and ran to the left front door. He opened the door, entered the front seat and leaned over into the back seat, grabbing Whitehead's legs at the knees. Officer McAnear alighted from the vehicle and ran to the right rear door to assist Officer Jeffers. It was apparent to the officers that Whitehead had unusual strength as he was still kicking and thrashing about as the officers attempted to contain his legs. Officers McAnear, Compton and Mulford had left their batons in their vehicle.

Officer Jeffers held the bar-arm control hold on Whitehead for approximately 30 seconds, but was unable to render the suspect unconscious. With the assistance of the additional three officers, Jeffers and Sweet were able to place Whitehead's upper torso on the floor of the police vehicle with his legs on top of the rear seat. Whitehead was lying on his right side, facing forward.

Officer Jeffers closed the right rear door and Officer Sweet moved to the right side of the rear seat. Sweet knelt on the seat and placed his right knee on Whitehead's left

shoulder. He placed his right hand on Whitehead's head and his left hand on the left side of the suspect's waist. Officer Compton climbed over the front seat onto the rear seat. He knelt on the seat, straddling Whitehead's legs with his back to Sweet. Compton grasped Whitehead's ankles with his hands.

Officer Mulford closed the left rear door and returned to his vehicle, accompanied by Officer McAnear. Officer Jeffers entered the vehicle and drove east on 76th Street to 77th Station. Jeffers drove into the rear parking lot of 77th Street Station (a distance of .8 mile). (Officers Sweet and Compton remained in their aforementioned positions holding the suspect down on the floorboard of the vehicle during transportation to 77th Station.) En route to 77th Station, Officer Jeffers requested Communications to have unit 12L140, Sergeant Harsma, meet him on Tac. 1. The sergeant complied, and Jeffers informed him over Tac. 1 that the suspect was "still extremely violent." Jeffers also advised the sergeant that they were going to stop at 77th Station to obtain plastic handcuffs and then transport the suspect directly to Jail Division for placement in a padded cell. Sergeant Harsma acknowledged the transmission and agreed with the decision.

Officers Mulford and McAnear followed unit 12A35 to the parking lot of the station. Officer Jeffers parked his vehicle in the lot, headed north approximately 30 feet north of the building. Mulford parked directly in front of unit 12A35. Officer Compton shouted from the police vehicle to Officer Mulford, instructing him to get some plastic handcuffs which he, Compton, routinely carried in his uniform hat. Officer Compton had left his hat in unit 12Z6's vehicle. Mulford complied.

Officer C. A. Bryant, 20900, who was exiting from the rear door of 77th Station, observed the struggle in the rear

seat of unit 12A35. He heard Compton's request for plastic handcuffs. Bryant obtained three pairs of plastic cuffs from his vehicle which he gave to Officer McAnear, who then went to the assistance of the officers who were attempting to cuff Whitehead's ankles.

Officer Mulford moved to the left rear door of unit 12A35, opened the door and, with the assistance of Officer Compton, placed a pair of the plastic cuffs around Whitehead's ankles. Officer McAnear then placed two pairs of plastic cuffs together. McAnear and Officer Compton then attempted unsuccessfully to place the cuffs around Whitehead's knees in an effort to further restrain the suspect.

Whitehead was again subdued, and Officer Sweet changed his position in the rear seat, placing his left knee on Whitehead's left shoulder and his right foot on the left side of Whitehead's head. Whitehead's upper torso at this point was on the floor of the vehicle. He was lying on his right side facing forward, his head adjacent to the right rear door. His legs from the area of his thighs down were on top of the rear seat. Officer Compton was straddling Whitehead's legs. Officer Jeffers then drove from the lot, en route to Jail Division.

Officer Jeffers turned left, west, on 76th Street to Grand Avenue, then north to the Harbor Freeway on-ramp at Florence. Whitehead continued to yell unintelligible phrases. He progressively became more violent in that he was twisting and turning while being held down on the floor of the vehicle. When the unit reached a point on the Harbor Freeway in the vicinity of the Santa Monica Freeway overpass, Whitehead became tranquil in that he stopped struggling and yelling. The officers continued north to the southbound Santa Ana Freeway and then exited at the Los Angeles Street off-ramp. Jeffers turned right and traveled south to Temple Street, then east on Temple Street to San Pedro, south on San Pedro and entered the parking lot in Jail Division at

1304 hours. (It is 6.1 miles from 77th Area Station to Parker Center.)

Officer Jeffers alighted from his vehicle, entered the jail and conversed with Sergeant T. R. Brummett, 10182, the misdemeanor jail supervisor. Jeffers informed the sergeant he had an "extremely violent prisoner" in his vehicle who admitted being high on PCP. Jeffers requested assistance from jail personnel in placing the suspect into a padded cell.

Unit 12Z61 had followed the officers to Jail Division, and Officer McAnear entered the jail and obtained a gurney. Sergeant Brummett, Officers Jeffers, McAnear, Jail Division Officers J. Hays, 20961, and J. Naranjo, A9558, returned to Jeffers' vehicle. McAnear wheeled the gurney to the right side of the vehicle and Officer Mulford opened the right rear door. Officer Sweet alighted from the vehicle, and Mulford reached into the vehicle with his left arm. He grasped Whitehead under the left arm and lifted him from the vehicle.

Officer Mulford, assisted by the jail personnel, placed Whitehead on the gurney in a prone position with his head turned to the left. Leather straps were secured around Whitehead's upper torso and lower legs to prevent him from falling or rolling from the gurney.

It appeared to the officers that Whitehead was in a semiconscious state as his breathing was very shallow. Officers McAnear and Mulford wheeled the gurney containing Whitehead into padded cell number two which is 8 feet by 8 feet in size. Officers Jeffers, Compton, and Sweet followed Whitehead into the cell and stood by as the plastic cuffs were removed from Whitehead's ankles by Station Officer Naranjo. Officer Sweet then removed the handcuffs from Whitehead's wrists.

Sergeant Brummett instructed the jail personnel to remove all of Whitehead's clothing for his own safety. It appeared to the officers at this time that Whitehead had ceased breathing and Sergeant Brummett advised Officer F. Tanner, 5678, to summon Doctor Kade, the jail physician.

Doctor Kade responded immediately at 1308 hours. He could not detect a pulse or audible heartbeat, and advised jail personnel to wheel Whitehead into the dispensary. Doctor Kade began cardio-pulmonary resuscitation. The Los Angeles Fire Department was notified and rescue ambulance three responded at 1313 hours. The paramedics administered a defibrillator and Whitehead was shocked twice at 400 volts with no response. Doctor Kade pronounced death at 1320 hours.

*INJURIES*

On February 2, 1978, Doctor Manual R. Breton, Deputy Medical Examiner, County of Los Angeles, performed a post-mortem examination on the remains of Alvin Whitehead.

The cause of death was attributed to "fracture cervical spine with crushed injury of spinal cord."

The injuries are the result of blunt trauma: the fatal injury is the transverse fracture of the intervetebral [*sic*] disc between the fourth and fifth vertebra with excessive mobility and softening of the corresponding segment of the spinal cord. There was no visible external trauma to the neck area. Noteworthy in the coroner's protocol is the toxicological analysis. It has been noted that Alvin Whitehead possessed the following amounts of phencyclidine (PCP): liver, 0.05 mg., urine, 0.07 mg., blood, 0.02 mg.

On February 4, 1978, subsequent to the release of Whitehead's body by the Los Angeles County Coroner's office, a second autopsy was performed at the request of White-

head's next of kin. The second autopsy was conducted at 4700 South Avalon Boulevard, Connor-Johnson Mortuary, by Doctor John Ryan in conjunction with Doctor Mal Watson. The doctors subsequently made a press release indicating that they had discovered an injury to Whitehead's neck which, in their opinion was incurred through the use of an object similar to a police baton.

Whitehead's body was interred on February 8, 1978, at Lincoln Cemetery, 16701 South Central Avenue, Compton. At the time of this report, the Los Angeles County Coroner's office has no official infomation [*sic*] on the second autopsy.

On April 19, 1978, at the request of the Los Angeles County Coroner, an inquest was held into the death of Alvin Whitehead. After three days of testimony, on April 21, 1978, the jury returned a verdict of death "to have been at the hands of another person other than by accident." This finding was ascribed to by five jurors. The remaining four jurors ascribed his death as "to have been an accident."

On May 17, 1978, on order of the Los Angeles County Coroner, the remains of Alvin Whitehead were exhumed. A third autopsy was conducted at the Los Angeles County Morgue by Doctor Manuel Breton. Doctor D. Wisely was present and assisted. The official results of this autopsy are still pending.

Unofficial results of the third autopsy related to Robbery-Homicide Division investigators by Doctors Breton and Wisely indicate that the marks on the neck of Alvin Whitehead referred to by Doctors Ryan and Watson were incurred after death (post-mortem). They were probably caused by tissue which was exposed to the air or post-mortem pressure to the neck.

On May 20, 1978, Doctor Watson was interviewed on Channel 4 at 1600 hours concerning the death of Alvin

Whitehead. During the course of the interview, Doctor Watson alleged that he had confidential information that the toxicological findings by the Los Angeles County Coroner's officer relating to PCP content in Alvin Whitehead "were doctored" (RHD tape number 72668).

*NOTIFICATIONS*

Lieutenant F. A. Mullens, Acting Commanding Officer, and Lieutenant C. A. Higbie, Officer in Charge, Officer-Involved Shooting Investigations, Robbery-Homicide Divison, were notified of this incident at 1330 hours. Investigators R. L. Calkins and W. A. Welch were assigned to the investigation. Lieutenant Higbie and the investigators responded to the scene from Parker Center.

*PERSONNEL AT THE SCENE*

*77th Street Area*

*Sergeant R. O. Harsma, 12870, 12L140; Officer J. B. Jeffers, 15974, 12A35; Officer T. M. Sweets, 16648, 12A35; Officer J. D. Chambers, 14898, 12M88; Officer J. A. Bennett, 14809, 12M89; Officer M. G. McAnear, 17349, 12Z61; Officer J. L. Mulford, 16314, 12Z61; Officer H. R. Compton, 17169, 12Z61.

*Jail Division*

Sergeant T. R. Brummett, 10182, Misdemeanor Jail Supervisor; Station Officer J. Naranjo, A9558; Officer J. D. Hays, 20961; Officer F. Tanner, 5678.

*Jail Dispensary*

Doctor Harold Kade, Physician; T. Peretris, Registered Nurse.

*Scientific Investigation Division*

Photos: L. R. Gaines, J9846.

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*1st uniformed supervisor at scene

*Los Angeles Fire Department, Rescue Ambulance 3*

Driver: G. Eastman, Badge 40. Attendant: R. Davis, Badge 146.

*Los Angeles County Coroner's Office*

J. Decker, Investigator.

*SUSPECT*

WHITEHEAD, Alvin Lawrence, male Negro, 6' 1", 165 pounds, DOB: 11-24-40, LA 69-458J, CII 1-967-281, FBI 771235E, Social Security number 487-32-2296, Cal. Op. M-866215, last known address, 1210 West 71st Street, Los Angeles. A complete arrest record of Alvin Whitehead is listed below:

7-17-61 — SO Santa Ana; 211 PC (Strong Arm Robb); 8-18-61, 11 Mos. Co. Jl.

2-10-64 — Cnty. Prob. Dept. L.A.; 487.2 PC, GT Person; Proc. SS, 3 yrs. prob., $150 fn., $16 PA, Restn. thru PO: 7-9-67, Exp.

2-12-64 — PD Los Angeles; 211 PC, Robb.; 7-10-64, 487.2 PC Proc. Susp. 3 yrs Prob. $150 fn & pa.

2-14-64 — PD Los Angeles; G.T. Person; No dispo.

6-10-64 — SO Los Angeles; F:A (Traf Warr.) PD LA Arr.; $55/2 ds.

12-12-64 — PD Los Angeles; 245 PC; No dispo.

2-12-65 — PD Beverly Hills; No Oper. Lic. in Poss.; $276 B/F.

2-16-65 — PD Fullerton; 211 PC, Armed Robb.; No dispo.

2-16-65 — SO Santa Ana; Armed Robb. (PD Santa Ana (Arrest); Holding for PD Santa Ana 4-29-65, Robb. 2nd Prison.

4-2-65 — SO Santa Ana; Bench Warr. (FTA/For Trial); Holding for LA Muni. Court.

4-5-65 — PD Los Angeles; Warr. 40508 VC 4 cts. 12951, 21653, 21703, 22102, 25959B VC; No dispo.

5-6-65 — Calif. Dept. of Corr.; Add. Com. Rec. Gt. (Prob. Rev) (487.2 PC); From L.A. Co. Term: 6 mos-10 yrs. CC Wpt. 5-8-68, paroled to L.A. Co. 5-6-71, Tent. disch. from parole.

11-3-68 — PD Los Angeles; 459 PC (Auto); 3-24-69, "J" Conv of 459 PC, 2nd. Deg. Crt. Sent. S.P. Susp. Sum. prob. 3yrs. 1st. yr. C.

10-11-70 — PD Los Angeles; 242,415, 148 PC; 10-15-71, Dism. Insuff. Evid.

9-16-72 — PD Los Angeles; 667 PC, Pt W/Prior Fel.; No dispo.

3-23-73 — PD Los Angeles; 23102 VC (DUI) (Arr. by CHP).

2-15-74 — PD Los Angeles; 23102a VC DUI M; No dispo.

7-16-74 — PD Los Angeles; 667 PC (PT) W/Prior Fel. No dispo.

12-29-77 — PD Los Angeles; 11378a H&S, No dispo.

(NOTE: On this last arrest, Whitehead was booked in possession of in excess of 30 grams of marijuana and 10.2 grams of PCP.)

*EVIDENCE*

The only items of evidence booked in connection with this incident are Whitehead's clothing which consisted of jacket, shirt, trousers, belt, shorts, shoes and socks.

*WITNESSES*

*O'LEARY, James T.*, (tape 71778), 7604 South Vermont (Bus. 752-5203), 14414 Harris Avenue, Compton, phone 638-8044. O'Leary observed a black and white police vehicle northbound on Vermont with an assumed arrestee in the rear seat accompanied by a uniformed officer. He stated he could not see clearly from his position, but the officer in the rear seat appeared to swing a 2-foot baton at the arrestee two or three times.

He stated that the car was in his view for approximately four seconds.

*WHITEHEAD, Rose* (tape 71780), 1210 West 71st Street, phone 752-4938. Mrs. Whitehead related to prior incidents in their residence and that Alvin Whitehead had taken his grandchild and apparently left for a location at Normandie and Florence. Some of Mrs. Whitehead's statements indicate that Alvin was violent at times and that she had called the police as a result of his actions in the past.

*ROBINSON, Wanetta Frances* (tape 71780), 1210 West 71st Street, phone 752-4938. Mrs. Robinson was interviewed simultaneously with Rose Whitehead. She was not at the scene of any incidents and only gave statements as to Whitehead's condition in the residence on 71st Street.

*KENT, Wanita* (not recorded), 938 West 76th Street (unknown phone). Stated she observed four officers place Whitehead in the rear seat of a police vehicle. Three officers got into one vehicle; two officers entered the rear seat with the suspect, and another officer drove from the area.

*DAVIS, Ramona,* 7200 South Western Avenue (business, 750-9041), 709 South Grevillea, apartment 4, Inglewood, phone 673-2137 (not recorded). Miss Davis stated she observed Whitehead in the back seat of a police vehicle at Florence and Western. She did not observe a fight or an altercation.

*DAVIS, Eddie,* 7200 South Western (business, 750-9041), 1619 West 166th Street, Compton, phone 631-1031 (not recorded). Mr. Davis at his place of business at Florence and Western observed several uniformed officers place a man into the back seat of their vehicle.

He saw another officer at the same location pick up a child and he then observed the officers leave the area. He did not see an altercation.

*TILLIS, Dinah*, (not recorded), 7200 South Western (business, 750-9041), 1281 Rosecrans, phone 770-3619. While standing at a hamburger stand at Florence and Western, Miss Tillis observed a man walk south on Western Avenue from Florence. She observed the man with a child on the west side of Western Avenue talking to a motor officer. After several minutes, she observed a black and white vehicle stop. After several minutes, she observed an altercation between the officers and the man which lasted for approximately one or two minutes. The next time she observed the man he was in the back seat of the police car. She noted he was perspiring and, "looked weird to me."

*WHITFIELD, Ronald Lee*, (not recorded), 11809 Daleside, Los Angeles, phone 777-5831, 7204 South Western, business 750-9600. Mr. Whitfield initially observed two motor officers and two uniformed officers handcuffing a male Negro on the sidewalk at the Shell station. He observed him place the man into the back seat of a police car. "He got in under his own power." Mr. Whitfield did not observe an altercation.

*CAMPBELL, Larry*, 10119 England Avenue, apartment 11, Inglewood, phone 678-4446 (not recorded). Witness was located at the southwest corner of Florence and Western. He observed five police officers trying to control a male Negro on the sidewalk near the Shell station. One of the officers was holding a small boy as the other officers tried to control the male. After they got him on the sidewalk, he was placed in a police car.

*JAMES, Willie "B"*, 1225 Bradbury Street, West Covina, phone 336-7269, 7216 South Western, L.A., business, 778-3090 (not recorded). Mr. James observed the motor officers arrive and converse with a male Negro. He then observed a black and white vehicle park near the motor officers. He observed the struggle between all of the officers and the male as they forced him to the ground for handcuffing. He observed one officer step down on the man's chest "three or four times, like he was trying to keep the man under control." The man was kicking. After they had the male Negro under control, he was placed in a black and white car. Mr. James stated he did not see any "physical force."

*TROTTER, Malcolm J.*, 3304 West 74th Street, phone 751-0534, 7204 South Western, business, 751-2168 (not recorded). Mr. Trotter observed a male, black, with a baby, talking to two motor officers. His attention was directed elsewhere and a few moments later he saw the man struggling with one motor officer. It appeared that the man was too strong for the motor officer to handle. The officer was joined by three other officers. There were no blows being struck by the officers. The man was attempting to throw punches, but he was being restrained. Eventually the man was taken to the ground, rolled onto his stomach and handcuffed. The officers stood the man upright and walked him to the police vehicle. The man struggled but the officers did not hit him. The officers departed without incident.

*JOHNSON, Wesley (NMN)*, 916 West 131st Street, Compton, 979-6214 (tape number 69114). At the time of this incident, Johnson was in the beauty shop located just south of the Shell station at the southwest corner of Florence and Western. He observed two motor officers talking to Whitehead and observed two black

and white vehicles arrive. He observed Whitehead run away from the officers then turn and attack one officer, swinging both his arms. Johnson observed Whitehead taken to the ground and handcuffed. Johnson stated, "I was surprised because I thought they were really going to hurt him, but they didn't."

In addition to the above handwritten statements, some of which were recorded, seventeen additional residences in the area of the incident on 76th Street were canvassed; however, the residents could not be located. Seven residences contacted answered the door, but stated to investigators they saw nothing regarding the incident. Three other residences were canvassed, and the occupants stated they were not home at the time of the incident. A complete list of addresses of residences canvassed is on file at Robbery-Homicide Division.

*COMMUNICATIONS*

Copies of communication tickets pertaining to this incident are on file at Robbery-Homicide Division.

Approved: /s/ C. A. Higbie
Lieutenant C. A. Higbie, Officer in Charge
Officer-Involved Shooting Investigations
Robbery-Homicide Division
October 16, 1978

**Selected Portions of the Autopsy Report of Alvin Whitehead (Exhibit 10).**

CASE REPORT

Tape #1-6A Start 397 End 0405.

Reported as: Accident; Homicide; In Custody.

Taken by Wine; Post Mortem at Coroner.

NAME OF DECEASED — Alvin; Whitehead; DATE of DEATH 2-1-78; HOUR — 1320.

SEX M; COLOR OR RACE N; AGE — 34 YEARS.

PLACE OF DEATH — City Jail; STREET ADDRESS — 150 N. Los Angeles St; CITY OR TOWN — Los Angeles.

USUAL RESIDENCE — 1210 W. 71th [*sic*] Street; CITY OR TOWN Los Angeles.

Reported by Coiner; Address L.A.P.D.; Date 2-1-78; Time 1325. Pronounced Dead by Dr. Kade. Investigating Agency L.A.P.D. Robbery-Homicide, Officer Calkins.

Next of Kin Rosemarie Whitehead; Address 1210 W. 71th [*sic*] St. Relationship Mother; Notified by L.A.P.D. [*illegible*]; Date and Time 2-1-78 18:30.

Personal I.D. By: Pers. Effects — Papers.

PLACE OF INJURY — Street; INJURY AT WORK — No; DATE OF INJURY — 2-1-78; HOUR — 1225; PLACE OF INJURY — Florence and Western.

AUTOPSY REPORT

No. 78-01594

I performed an autopsy on the body of WHITEHEAD, ALVIN, DEPARTMENT OF CHIEF MEDICAL EXAMINER-CORONER, 104 N. MISSION RD., L.A. on FEBRUARY 2, 1978 @ 1220 HRS.

From the anatomic findings and pertinent history I ascribe the death to: FRACTURE, CERVICAL SPINE WITH CRUSH INJURY OF SPINAL CORD.

*Anatomical Summary:*

I. Injuries (all fresh).

A. Hemorrhages soft tissue of left side of neck.

1. Hemorrhage, anterior longitudinal ligament.
2. Laceration, posterior longitudinal ligament.
3. Fractures with abnormal mobility of the cervical spine.
4. Epidural hemorrhage.
5. Softening, corresponding segment of the spinal cord.
6. The cervical spinal column (the arch with the process) and the spinal cord is submitted for further examination gy [*sic*] the Neuropathologist Consultant.
7. Petechiae of the palpebral conjunctiva, upper and lower eyelids, bilateral.

B. Abraded-contusion of the right side of the forehead.

C. Abrasion (x 2) of the right cheek.

D. Contusions of the left cheek.

1. Hemorrhage, left side of head. (Pictorial 20Ga)

E. Abrasion, anterior surface, left shoulder. (Pictorial 20A)

F. Abrasion (x 2) back of the right shoulder. (Pictorial 20B)

G. Ligature markings of the right and left wrist, consistent with handcuffs. (Pictorial 20A and 20B)

H. Ligature markings of the ankles. (Pictorial 20A and 20B)

II. Other conditions.

A. Fatty liver, marked.

B. Hypertensive cardiomegaly, slight.

C. Bullous emphysema, marked, bilateral.

DIAGRAMS AND OTHER PICTORIALS USED:

The following diagrams are used during the performance of the autopsy.

1. Body, full length, anterior. (Form 20A)
2. Body, full length, posterior. (Form 20B)
3. Head, face, and neck, anterior, posterior, and right and left lateral. (Form 20F)
4. Base of skull and calvarium. (Form 20G)
5. Brain and spinal cord. (Form 20D)

DESCRIPTION OF INJURIES AND OPINIONS:

The injuries, which are listed under the heading of the Anatomical Summary and are diagrammed on Pictorials 20A, 20B, 20F, 20G, and 20D, are the result of blunt trauma; the fatal injury is the transverse fracture of the intervertebral disc, between the 4th and 5th vertebrae, with excessive mobility and softening of the corresponding segment of the spinal cord. Although the intervertebral disc between the 3rd and 4th vertebrae, is also fractured, the adjacent vertebrae are fairly stable.

Layer by layer dissection of the neck, demonstrates an aggregate of three (3) areas of hemorrhage of the soft tissue of the left side, anterior to the sternocleidomastoid muscle,

which measures 2 × 1½ inches. Removal of the neck structures demonstrates a 2 × 1½ inch are [*sic*] of hemorrhage of the anterior longitudinal ligament. Opening of the spinal canal, demonstrates epidural hemorrhage, accumulated mainly posterioly [*sic*] into the level of the 5th, 6th, and 7th cervical and 1st thoracic vertebrae. Dissection from the back of the neck, deonstrates [*sic*] hemorrhage surrounding the spinous process of the 5th cervical vertebra.

There are scattered petechiae of both eyelids; the hyoid bone and the thyroid and cricoid cartilages, are intact. The aggregate of three (3) hemorrhage os [*sic*] the left side of the neck, extends to involve, slightly the hyoid bone.

It is the opinion that death occurred almost immediately, after the spinal cord was crushed.

NOTES:

1. The diagrams do not intend to be facsimiles. The departmental color photographs depict the appearance of the injuries and the body, prior to, and during the performance of the autopsy.
2. The preceeding [*sic*] summarized findings of the Anatomical Summary and of the Description of Injuries will not necessarily be repeated in the followinig detailed review, which, in essence, is a description of the decedent before sustaining the injuries.
3. The autopsy is performed in Forensic Autopsy A, Room S-24, Dissecting Table #6.

EXTERNAL EXAMINATION:

The unembalmed, refrigerated body is that of a well developed, muscular but slender black male, with a medium dark complexion, weighing 159 pounds, measuring 70 inches and appearing to be the stated age of 37 years. The body is identified by the Coroner's body tags; fingerprints

are also obtained. The body and tissue preservations are good. There is a marked rigor mortis, livor mortis is indistinct. The irides are brown and the sclerae are clear. There are scars of the right side of the abdomen and the left arm, as diagrammed on Pictorials 20A and 20B; there are no other identifying body marks, such as amputations, tattoos or deformities. The head is of normal size and symmetric. The head hair is black and there is a mustache joining a beard and the body hair reveals a normal male distribution. The oronasal passages are not obstructed. The mouth is not unusual; the teeth are in a good condition. The skin is generally fairly smooth and shows no significant focal lesions or abnormal coloring or pigmentation, not mentioned elsewhere; there is a small, dark, birth mark of the right side of the face, under the right eye.

* * *

**Los Angeles Police Department Report on the Death of David Adkins (Exhibit 13).**

CONFIDENTIAL

OPERATIONS-HEADQUARTERS BUREAU

The Chief of Police considers this report as highly confidential. Administrative use is limited to concerned staff and command personnel of the Los Angeles Police Department. Any other use is forbidden by the City Attorney.

*PLEASE RETURN THE REPORT TO ROBBERY-HOMICIDE DIVISION AS SOON AS PRACTICABLE.* This report has a registered distribution. The Officer-Involved Shooting Team is responsible for maintaining a record of outstanding reports. The return of this copy of the report will be recorded.

THIS REPORT IS *NOT* TO BE REPRODUCED OR COPIED.

Robbery-Homicide Division Report of Law-Enforcement-Activity-Related Death: DR 78-663 943; 415 P.C. SUSPECT; ADKINS, David R. (DECEASED); Male Negro, 39.

Involved Officers: C. H. BENNETT, 22026, 13A75; J. L. GLADE, 17374, 13A75.

Date and Time of Occurrence: July 24, 1978, 0050 hours.

Location of Occurrence: 1200 East 45th Street.

Area of Occurrence: Newton Area; R/D 1365.

Officer-Involved Shooting Team: DET. III D. R. HAM, 5621; DET. II H. J. HALLORAN, 11494.

*CONFIDENTIAL*

*THIS REPORT IS FOR THE CONFIDENTIAL USE OF THE CHIEF OF POLICE*

To: DARYL F. GATES, CHIEF OF POLICE

Sir:

*CHRONOLOGICAL NARRATIVE*

On Monday, July 24, 1978, at 0040 hours, LAPD Communications broadcast: "Any Newton unit, 415 family dispute, 1200 East 45th Street." At the time of the transmission, Newton Area Team II unit 13A75, uniformed officers J. L. Glade, 17374, the driver, and his partner, C. H. Bennett, 22026, were in the vicinity of 50th Street and Central Avenue. The location of the call was in 13A75's district. Officer Bennett advised Communications that 13A75 would handle the call at 1200 East 45th Street.

Officer Glade drove directly to the area. As the officers traveled west on East 45th Street in the 1200 block, Officer Glade observed a duplex (1206 East 45th Street) on the south side of the street. Officer Glade mistakenly read the address on the duplex as 1200 East 45th Street instead of 1206. It was Glade's intention to park one structure west of the location of their call. Thus, inadvertently, they parked their black and white 1975 Plymouth (shop number 84714) headed west on the south side of the street in front of 1200 East 45th Street, the location of their call.

The officers observed a male Negro, subsequently identified as David Adkins, walking north toward them on the north-south walkway of 1200 East 45th Street. Adkins was attired in dark trousers, socks (no shoes) and a dark sleeveless shirt. The officers alighted from the police vehicle, each with his baton in the ring affixed to his belt. Their flashlights were in their trouser pockets.

Officer Glade inquired of Adkins, "Did you call us?" Adkins responded, "No, I didn't call." Officer Bennett asked, "Have you heard any loud noises coming from over there?" As he spoke, Bennett pointed in a southeasterly direction toward the duplex. Adkins replied, "No, I haven't heard anything."

The officers walked east along the south sidewalk of 45th Street. As they reached the front of the duplex (1206), Officer Glade directed the beam of his Kel-light flashlight southwest toward the duplex and illuminated the house number. The officers then determined that the number on the duplex was 1206. Glade commented to Bennett, "Partner, this is 1206, 1200 must be next door." The officers turned and walked west. They again observed Adkins standing on the sidewalk ahead of them at the intersection of the sidewalk leading to 1200 East 45th Street.

The officers continued walking west to Adkins' location. Officer Glade asked, "Is that 1200 East 45th Street?" As he spoke, Glade pointed in a southerly direction toward the residence. Adkins replied, "Yeah, that's 1200 East 45th Street. I live there." Officer Glade stepped behind Adkins, who was facing east, and made a cursory search of his trousers for weapons. The results were negative.

Officer Glade told Officer Bennett, "You stay here with him (Adkins)." Glade then walked south on the north-south walkway toward 1200 East 45th Street. Officer Bennett inquired of Adkins, "What happened?" Adkins responded, "Me and my old lady just had an argument." As Glade approached the two steps leading to the front porch of the residence, Adkins yelled, "There's nobody there." Officer Glade stepped up onto the porch and observed the front door open and the screen door closed.

Officer Glade turned, stepped down from the porch steps to the walkway and observed a female Negro, later identified as Nell Miller, walking in a southwesterly direction diagonally across 45th Street toward Officer Bennett and Adkins. She was accompanied by five children. As she approached Officer Bennett, Mrs. Miller stated in a loud voice, "I'm his wife. I called." Officer Glade, unable to discern what Mrs. Miller said, shouted, "Ma'am, would you step

over here and talk to me?" Mrs. Miller and two of the five children walked south to the officer's location on the porch near the front door of the residence.

Officer Glade inquired of Mrs. Miller as to what had occurred. She responded, "He broke into my house." Glade replied, "Wait a minute. What is he to you?" Do you know him?" She responded, "I've had two of his babies." Officer Glade asked Mrs. Miller, "Is he still living here?" She replied, "Yes." Mrs. Miller continued, "He broke in and started knocking things around. He always acts that way when he's loaded." Officer Glade then inquired of Mrs. Miller, "What would you like us to do?" She said, "I'd just like his ass out of here." Glade responded, "Okay." The officer turned and walked north toward Officer Bennett and Adkins. Mrs. Miller and the two children remained on the porch.

While Officer Glade and Mrs. Miller conversed, Officer Bennett asked Adkins, "How do you want to take care of this problem?" Adkins replied, "Any bitch that calls the police on me, I don't want her anyway." Officer Bennett asked Adkins, "What do you want to do?" Adkins replied, "I'll get my clothes and get out of here." Officer Bennett asked, "You want to get your clothes and leave?" Adkins replied, "Yes, I want to get my clothes and leave right now."

As Officer Glade walked north toward his partner and Adkins, Officer Bennett stated, "Hey, Jerry (Glade), the family dispute is over. He just wants to get his clothes and leave."

The officers then walked south with Adkins to the front porch of the residence. They stepped up onto the porch and walked toward the screen door. Mrs. Miller, who had remained on the east side of the porch, sarcastically com-

mented to Adkins, "Yeah, get your clothes and get out of here." Adkins, whose right hand was on the screen door knob, replied, "Hey, bitch." Officer Glade interrupted Adkins and stated, "Hey, wait a minute, let's not have another fight."

Officer Glade was standing at Adkins' left rear between Adkins and Mrs. Miller. Officer Bennett was standing approximately 3 feet behind (north) of Adkins. The officers each held their non-illuminated flashlights in their right hand. Officer Glade told Adkins, "Just go in and get your clothes." Adkins, who had been passive to this point, replied, "Hey, man, this is my house. Don't tell me what to do." Glade responded, "Let's just go in and get your stuff or I'm going to have to take you downtown."

Adkins opened the screen door and entered the living room. Officer Glade entered approximately 2 feet behind Adkins, followed by Officer Bennett who was approximately 2 feet behind his partner. The only illumination within the residence was supplied by a 60-watt incandescent light bulb hanging from the ceiling in the center of the dining room which was directly south of the living room. The officers, upon entering the living room, illuminated their flashlights. The officers observed several items of overturned furniture (bookcase, chair and small table) on the west side of the living room.

Adkins turned to his left and entered the bedroom doorway located on the east side of the living room. The officers followed directly behind Adkins as they entered the totally darkened bedroom. The officers illuminated Adkins in the beams of their flashlights. Adkins walked east toward the closet door located on the south wall of the bedroom near the southeast corner. The officers remained near the bedroom doorway.

Officer Glade told Adkins, "Wait a minute. Are there any lights in here?" Adkins responded, "You've got two lights (referring to the officers' flashlights)." Glade observed a light switch on the west bedroom wall, south side of the doorway. He flipped the switch twice with negative results. Adkins continued walking east toward the closet doorway. Glade next inquired, "I mean are there any lights in the room?" Adkins responded, "Motherfucker, you've got lights."

At that point, Adkins stepped partially into the closet, his hands and arms disappeared from the officers' view. Officer Glade walked east to the west side of the closet door (Adkins' right side). Officer Bennett also moved toward the closet door and stopped approximately 5 feet behind Officer Glade. Glade was apprehensive due to Adkins' sudden belligerent attitude and opined that he was possibly reaching for a weapon in the closet.

Officer Glade decided to lead the suspect back into the living room and have Mrs. Miller obtain Adkins' coat and shoes. Glade grasped Adkins' upper right arm with his left hand and stated, "Come on, let's go." The officer and suspect turned to the right and started to walk slowly west toward the door leading to the living room. Adkins did not resist. Officer Bennett turned and walked into the living room ahead of Adkins. When Bennett reached a point approximately 4 feet into the living room he stopped and turned around, facing east toward the bedroom doorway.

Officer Glade and Adkins walked toward the bedroom door leading to the living room. The officer walked at Adkins' right rear due to the narrow passageway between the south bedroom wall and the bed. Adkins stated to the officer, "Hey, man, this is my house and I'm a man, and if this is the way you want it—" When the statement was made,

Adkins and Officer Glade were approximately in the bedroom doorway.

Adkins suddenly stopped, whirled to his right and struck Officer Glade on the upper left chest with his right elbow. The force of the blow knocked the officer approximately 4 feet rearward, east. He dropped his flashlight and lost his grip on the suspect's right arm. Glade's legs struck the foot of the bed and he fell backward into a supine position on the floor south of the bed. (Officer Glade was unaware that his baton had fallen from his baton ring as he fell backward.)

Officer Bennett observed Adkins strike Glade, knocking him back into the dark bedroom. Adkins immediately turned to his left, bent forward and lunged west toward Officer Bennett. The top portion of Adkins' head struck Bennett in the abdominal area. Simultaneously, Adkins placed his left hand on the butt of Officer Bennett's service revolver which was encased in a holster at the officer's right side. Adkins then placed his right hand at Bennett's left waistband near the officer's baton. The officer turned sharply to his right, thus Adkins' left hand was forced from the butt of Bennett's revolver.

Adkins forced Officer Bennett backward, west, with his head and body. Bennett reached out with his left arm and grasped the suspect at the right side of his neck. Bennett, who had his three-cell black plastic flashlight (10 inches long, 14.88 ounces) in his right hand, then struck Adkins four times on the left side of his head with the flashlight.

Adkins, who was facing south, placed both of his arms around Officer Bennett's waist. Bennett dropped his flashlight to the floor, faced north, and placed his arms around Adkins' upper back in a bear hug hold. The struggle continued south toward the large doorway separating the living room and dining room.

Officer Glade, from his position on the bedroom floor, observed Adkins bend forward and run or lunge west toward Officer Bennett. He observed Adkins butt Bennett in the abdominal area with his head, forcing the officer backward. Officer Glade stood and ran west into the living room as the suspect and Bennett wrestled toward the dining room. Glade moved to Adkins' left side and grabbed the suspect's left forearm. The officer then attempted to force Adkins' left arm backward into a left rear wrist lock. Before the wrist lock could be applied, Adkins crouched. The suspect suddenly turned to his left and with his left shoulder struck Officer Glade in the upper left abdominal area. The officer was knocked upward and approximately 6 feet rearward. Glade fell to the floor on his buttocks with his back against the front door.

Officer Bennett moved behind Adkins, placed his arms under the suspect's right and left axilla and placed his hands behind the suspect's neck in a full nelson hold. Adkins moved forward (north) toward Officer Glade, dragging Officer Bennett behind him. Bennett continued his attempt to apply the full nelson hold on the suspect. When Adkins reached a location approximately 2 feet south of Officer Glade, who was in a semi-supine position against the front door, he kicked the officer on the left shin with his right foot. Glade then rolled to his right.

Officer Bennett managed to force Adkins rearward (south) toward a couch located adjacent to the east wall of the living room near the southeast corner. Officer Glade stood and removed his sap (9 inches in length, 384 grams in weight) from his left rear flashlight pocket with his left hand (the officer is left-handed). The officer then moved south toward the suspect.

Officer Bennett remained behind Adkins near the couch, facing north, and retained his full nelson hold on the suspect

from behind. Adkins moved his body from side to side and forward in an apparent attempt to break the hold; however, he was unsuccessful. Officer Glade moved south and struck the suspect once in the abdominal area with his sap. With his second blow, he struck Adkins on the right side of his head with the sap. The blows had no apparent effect.

Officer Glade was again about to strike Adkins on the head when the suspect moved, thus exposing Officer Bennett's head. Officer Glade stopped and returned his sap to his left rear trouser pocket. Glade grabbed the suspect's left wrist with his hands and pulled rearward. Officer Bennett released his hold and jumped on the suspect's back. He placed his right forearm around the suspect's neck in an attempt to apply a carotid control hold. Adkins fell to his right, the upper portion of his chest and shoulders were on the sofa with his head in a northeast direction. Officer Bennett dropped down on top of the suspect. Adkins yelled, "Fuck you motherfuckers. You're going to have to take me."

Officer Glade retained his hold on the suspect's left wrist with his left hand. He reached into his right waistband with his right hand, removed his Rover unit (number 6225) and activated the help call button. Adkins managed to pull his left wrist from Glade's grasp and struck the officer's right hand, knocking the Rover unit to the floor. Adkins then attempted to raise his upper torso from the couch.

Officer Bennett continued in his attempt to apply the carotid hold, but was unsuccessful as the suspect held his head down, thus his chin was against his upper chest. The officer's right forearm was held horizontally across the lower front portion of the suspect's face or upper chest area. Bennett successfully wrestled Adkins to the floor on his knees. At this point, Adkins was facing in a northeasterly direction and was near the doorway to the bedroom. Officer

Bennett was crouched behind the suspect with his chest against Adkins' upper back. Officer Bennett managed to apply a bar arm control hold with his right forearm, but was unable to lock the hold with his left hand. There was no apparent effect from the partially-applied bar arm control hold.

Adkins reached up with his hands, grabbed Officer Bennett's right forearm and attempted to pull the officer's arm from his neck. Officer Glade at this point was on his knees on Adkins' left side. He grabbed the suspect's left wrist with both hands and forced Adkins' left hand down to his left side. Adkins continued to pull on Officer Bennett's right forearm with his right hand.

Officer Bennett's right arm began to feel numb. He released his (right arm) bar arm control hold on Adkins and immediately attempted to apply a left arm carotid control hold. The officer placed the bend of his left arm on the suspect's chin, then reached over Adkins' right shoulder with his right arm and placed his right thumb and index finger under the suspect's nose. Bennett pulled upward with his right hand, forcing Adkins' head backward. Simultaneously, he placed the bend of his left arm around the suspect's throat in a carotid control hold. The officer did not lock the hold with his right hand as his right arm was still partially numb.

Officer Bennett applied pressure to the suspect's neck with his left arm. Adkins again raised his right arm and grabbed Bennett's left forearm with his right hand. Officer Glade reached across the front of Adkins' body with his left arm and grabbed the suspect's right wrist with his left hand. Glade forced the suspect's right arm downward.

Officer Bennett opined that his control hold was ineffective as Adkins continued to struggle. Bennett moved his left

arm from side to side in an effort to secure a more effective hold around the suspect's neck. Officer Glade exclaimed to his partner, "Keep it on him, Bennett. Keep it on him," referring to the carotid control hold.

The officers heard the sound of a siren in the distance. Adkins continued to struggle. A few seconds later, the officers observed an unidentified black and white police vehicle with the emergency lights illuminated and the siren activated, pass the residence eastbound on 45th Street. Adkins again attempted to raise his arms. Approximately 15 to 20 seconds later, Newton Area uniformed Officers W. Von Lutzow, 16467, and A. R. Landry, 21530, unit 13A9, entered the front door of the residence.

Officer Glade told Bennett, "Get him (Adkins) down all the way on the floor." Officer Glade then released his hold on Adkins' left wrist. Officer Bennett, with the upper portion of his body against Adkins' back, forced the suspect down into an east-west prone position on the floor near the bedroom doorway. Adkins' head was to the east.

Officer Glade grasped the suspect's left forearm with both hands and forced his left arm behind his body. Officer Bennett then released the pressure from around the suspect's neck but retained the hold. Glade removed his handcuffs with his left hand and placed a cuff on Adkins' left wrist. Glade told Bennett, "Bring his right arm around." Officer Bennett reached down with his right hand and grabbed the suspect's right wrist. Bennett then released his carotid hold, lowered his left arm, and placed it on Adkins' right wrist.

Utilizing both hands, Officer Bennett forced the suspect's right arm behind his body to a cuffing position. Officer Glade then placed a cuff around Adkins' right wrist. At this point, Officers Bennett and Glade heard "gurgling sounds emanating from Adkins' mouth. Glade rolled Adkins onto

his left side and patted him on the right cheek with his right hand. Glade next ordered Adkins, "Come on, get up. Get on your feet." It appeared to the officers that Adkins was breathing, but was unconscious. Officer Glade told Officer Bennett, "Grab an arm. We'll take him to our car and down to get MT'd."

Officer Glade reached down with his left arm and placed his left hand under Adkins' right axilla. Officer Bennett reached down with his right hand and placed it at the suspect's left axilla. The officers raised Adkins upward. They walked north, out the front door as Adkins' feet dragged on the floor. The two officers walked north to the south sidewalk of 45th Street where they were met by Sergeant P. Durham, 17021. Sergeant Durham advised the officers that another unit would transport Adkins. Glade and Bennett placed Adkins on the grass parkway in an east-west prone position with his head to the east. The officers observed ambulance unit RA 14 proceeding east on 45th Street approaching the scene. Bennett and Glade entered their police vehicle and drove to Newton station.

It was estimated that the carotid control hold was applied and retained for a period of one and one-half minutes to two minutes. During that period, Adkins continued to struggle and was not rendered unconscious. (Officer Bennett had received training in the use of the carotid control hold at the Los Angeles Police Academy three months prior to this incident.)

On Wednesday, October 3, 1978, a coroner's inquest was held regarding this incident. Officers Bennett, Glade, Von Lutzow and Landry, on the advice of counsel, invoked the Fifth Amendment; however, Mrs. Miller and three of her children testified. The nine member jury returned a unanimous verdict of "accidental death."

*INJURIES*

Los Angeles Fire Department rescue ambulance 14, attendant P. D. Gibson, 163 and E. A. Cronin, 86, driver, received the alarm at 0052 hours and arrived at the scene at 0056 hours. They administered emergency medical treatment, noting that Adkins was in full cardiac arrest, and began cardio-pulmonary resuscitation. Rescue ambulance 14 then transported Adkins to California Hospital medical center, 1414 South Hope Street, Los Angeles. Newton Area Officer W. Von Lutzow, 16467, 13A9, accompanied Adkins in the rescue ambulance.

Upon arrival, Adkins was treated by Doctor N. Khour who continued CPR with negative results. Doctor Khour pronounced death at 0133 hours. Coroner's investigator G. B. White arrived and took charge of Adkins' remains and his personal effects (coroner's case number 78-9095). Investigator White transported Adkins' remains to the Los Angeles County Morgue.

On Wednesday, July 27, 1978, 1045 hours, Doctor Joseph H. Choi, Deputy Medical Examiner, performed a postmortem examination on the remains of Adkins. Doctor Choi ascribed the cause of death as due to asphyxia due to a neck compression during a restraining procedure. Doctor Choi indicated other significant conditions as "Interstitial myocardial fibrosis and fatty metamorphosis of liver." Doctor Choi noted that the interior neck muscles exhibited small focal areas of hemorrhages. There was no fracture of the hyoid bone nor any hemorrhage around the hyoid bone. There was no fracture in the thyroid or cricoid cartilage and no hemorrhage around the trachea. Doctor Choi observed marked subgaleal hemorrhage on the frontal area of the head and also a small amount of similar subgaleal hemorrhage on the occipital area.

Doctor Choi submitted a sample of Adkins' blood for toxicological examination, and a 0.19 percent ethanol (blood alcohol) was found to be present.

*Officer Glade* was treated at California Hospital medical center by Doctor Litow for a rib contusion, left joint strain and left protibia contusion. Doctor Litow placed Officer Glade off duty for a period of seven days.

Officer Glade is 6 feet tall and weighs 185 pounds.

*Officer Bennett* was also treated at California Hospital by Doctor Litow for an ulnar nerve neuropraxia and parathesis. He was placed off duty for seven days.

Officer Bennett is 5 feet 11 inches tall and weighs 190 pounds.

*NOTIFICATIONS*

Captain Gene Rock, Commanding Officer, and Lieutenant C. A. Higbie, Officer in Charge, Officer-Involved Shooting Investigations, Robbery-Homicide Division, were notified at 0100 hours. Detectives D. R. Ham and H. J. Halloran were assigned to the investigation. The detectives and Lieutenant Higbie responded from their homes. Lieutenant Higbie was in charge at the scene.

*PERSONNEL AT THE SCENE*

*Newton Area*

Captain H. S. McGarry, Commanding Officer Support; Captain J. D. Madell, Commanding Officer Operations; Lieutenant T. F. Shepherd, 10471, Team Leader T-132; Sergeant J. M. Anthony, 11707, Team 134, Field Supervisor; Sergeant P. B. Durham, 17821, Watch Commander; Detective D. B. Adair, 14804, Investigations; Detective A. J. Welton, 13811, Investigations; Officer J. Glade, 17374, 13A75; Officer C. Bennett, 22026, 13A75; Officer W. Von Lutzow, 16467, 13A9; Officer A. Landry, 21530,

13A9; Officer M. Mabon, 21273, 13A93; Officer J. Najera, 16825, 13A93; Officer D. Avila, 20757, 13A61; Officer D. Gray, 21260, 13A61; Officer D. Hepburn, 17346, 13A43; Officer S. Dobson, 15513, 13A43.

*Scientific Investigation Division*

G. D. Slagle, L9855 — Photos.

*Los Angeles Fire Department, Rescue Ambulance 14*

Attendant: P. D. Gibson; Driver: E. A. Cronin.

*SUSPECT*

ADKINS, David, AKA: RANDALL, David, ADKINS, David Randall, RANDLE, David Adkins, ATKINS, David Goodman, male Negro, 5′ 6″, 187 pounds, 39 years, DOB: 6-4-39, black hair, brown eyes, LA 206259R, CII 1 746 505, FBI 464841C, SS 361502525. At the time of this occurrence, Adkins was residing at 1200 East 45th Street, Los Angeles. Adkins has an extensive, five-page felony and misdemeanor arrest record consisting of the following:

1-11-57 — PD Houston, Tex.; Inv.

1-22-57 — SO Houston, Tex.; Fel. Theft

6-17-57 — Texas Pr. System, Huntsville, Tex.; (2) (2-2 to 3's) CON; 3 years

7-7-60 — PD Los Angeles; 487.3 PC (GTA); 7-8-60, Rel.

7-16-60 — PD Los Angeles; 487.3 PC (GTA); 10-10-60, Not Glty.

7-19-60 — SO Los Angeles; 1) GTA; 2) Unlawful take Motor Vehicle.

12-21-60 — PD Los Angeles; 487.3 PC (GTA); 10-25-60, Rel. 849b(1) PC, Deemed not arr., Det. only

8-25-73 — PD Los Angeles; 23102 VC (DUI) Misd.

11-2-60 — PD Los Angeles; 487.3 PC (GTA); 11-4-60, Rel.

11-7-60 — PD Los Angeles; 487.3 PC (GTA) HTA: GT; 10851 VC; 2-23-61; Ct 2: 3 yrs. prob. 180 ds co jl restn, ct 1 not guilty.

7-11-61 — PD Los Angeles; 487.3 PC (GTA) #1; Add chg 10851 VC #2; 10-6-61, #1, Dism. #2 - 5 yrs. prob. 6 mos co jl.

3-27-62 — PD Los Angeles; 487.3 PC (GTA)

3-28-62 — PD Los Angeles; 10853 VC; 3-29-62, $50 or 10 ds co jl.

3-29-62 — SO Los Angeles; Misd. Traff. Viol.

4-14-62 — PD Los Angeles; 459 PC, Burg.; 6-4-62, sent to SP

4-17-62 — SO Los Angeles; Burg.

6-19-62 — Cal. Dept. Corr.; Theft Veh (prb rev); Theft veh W/pr. fel. conv (prb rev) & burg. 2nd deg (10851) Vc [*sic*] & 459 PC); From: LA Co. Term: 6 mos - 5 yrs. 2 cts & 6 mos. 15 yrs, all CC 8-9-62, out to crt.

8-9-62 — SO Los Angeles; Crt. Ord. Ret.

10-11-62 — Cal. Dept. Corr.; Crt Return; 6-21-65, Paroled. 6-19-68, Tent Disch. 6-19-68, Disch.

6-9-67 — PD Los Angeles; Warr 40508, 22101D VC Warr 80.69B MC 80.69.B MC Warr 22350, 14601A, 12951, 12500A, 12951A, 14601 VC, Warr 89,39 MC.

6-26-67 — SO Los Angeles; St Parole Vio. (St. Parole Arr)

9-2-67 — PD Los Angeles; Warr. 12500A, 12951, 14601A VC.

10-27-67 — PD Los Angeles; 245 PC, ADW; 11-17-67, 242 PC Case compromised, 415 PC, Dism. People Motion

10-30-67 — PD Los Angeles; 242-415 PC

10-31-67 — SO Los Angeles; Batt & DP (Arr by LAPD)

6-3-69 — PD Los Angeles; Warr. 43.13.2 MC 21435A VC.

7-28-69 — PD Los Angeles; 23102 VC, DUI

12-12-69 — PD Los Angeles; 211 PC (Robb); 12-15-69, Rel no chg.

9-6-70 — PD Los Angeles; 12021 PC. Ex Con W/Gun; 1-15-71, N/G

10-25-71 — PD Los Angeles; 261.3 PC Force Rape; 10-26-71, Rel. 849B (Det only) Ascert Evid. Insuff.

9-13-73 — PD Los Angeles; Warrant 242 PC; 9-18-73, 242 PC, Dism. 8-13-73, 245 PC, Compl Denied Ref. to City Atty.

10-20-73 — PD Los Angeles; 23102 VC DUI

9-25-74 — PD Los Angeles; 484 PC, Shoplift

10-25-76 — PD Los Angeles; Misd 23102A VC DUI

2-25-77 -- PD Los Angeles; 23102 VC, 14601A VC

5-9-78 — PD Los Angeles; 23102 VC, DUI.

*EVIDENCE*

Evidence booked in conjunction with this incident consists of a broken grey metal necklace, safety pin and a drinking glass that were recovered from the living room at 1200 East 45th Street.

*WITNESSES*

*WILLARD, Sharon, Nell, Elaine and Deotis*, 1200 East 45th Street, phone 234-6064 (tape number 70851)

*WILLARD, Otis*, 1201 East 45th Street, phone 234-7720 (signed statement)

*BROADEN, Charles E.*, 4617 Compton Avenue, phone 233-1249 (tape number 73768)

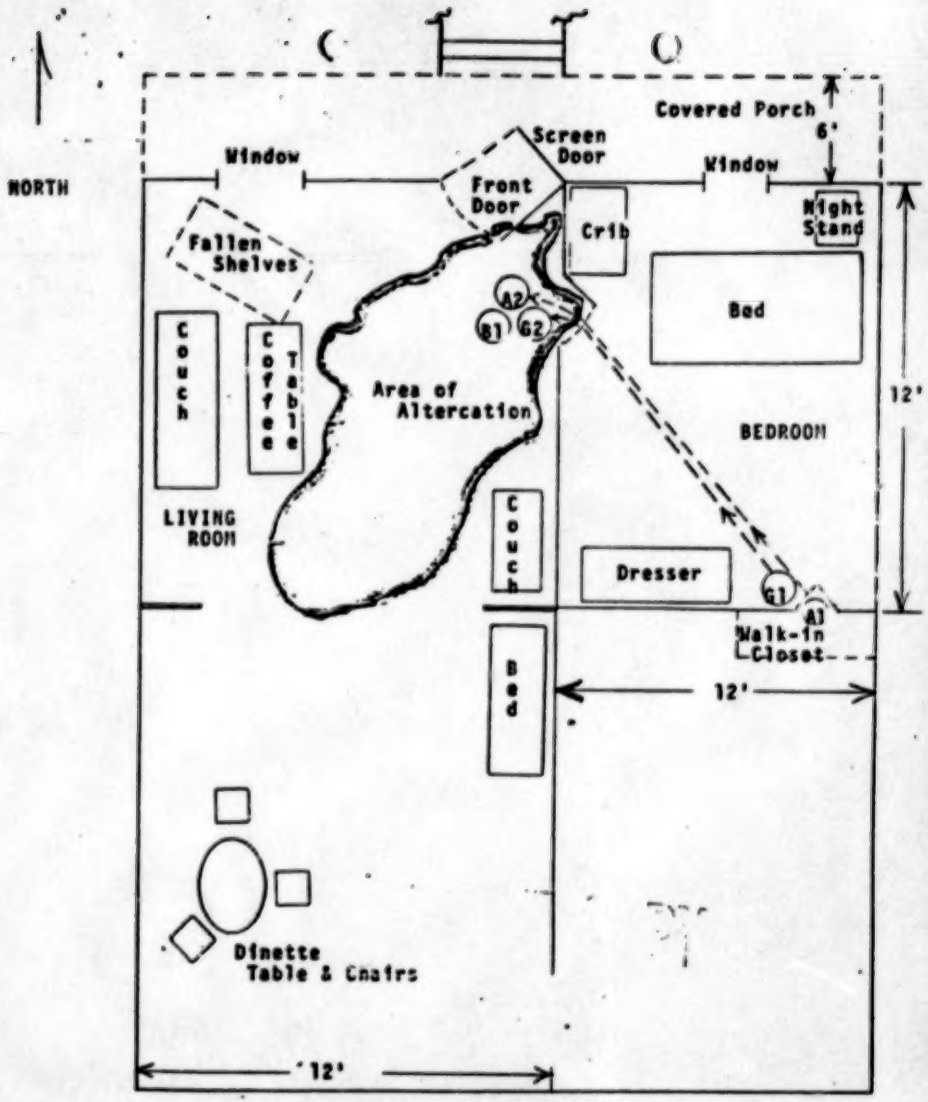
*WHITE, Robert Anthony*, 1203 East 45th Street, phone 231-4964, (tape number 73768)

Statements of the foregoing witnesses agree in substance with the Chronological Narrative portion of this report. Their tape recorded statements are on file at Scientific Investigation Division, Electronics Section.

*COMMUNICATIONS*

Copies of communication tickets pertaining to this incident are on file at Robbery-Homicide Division.

Approved: /s/ C. A. Higbie
Lieutenant C. A. Higbie, Officer in Charge
Officer-Involved Shooting Investigations
Robbery-Homicide Division
12-6-78




SINGLE FAMILY RESIDENCE, 1200 EAST 45TH STREET

DR 78-663 943
Officer-Involved Shooting
Halloran & Ham, R.H.D.

(NOT TO SCALE)

**Selected Portions of the Autopsy Report of David Adkins (Exhibit 12).**

CASE REPORT

Crypt # 36. Tape #2-44A; Start 1750; End 175.

Reported as: Natural?; Homicide?; In Custody.

Disturbing the peace, probably on drugs? Attacked police officer, was subdued by choke hold. DOA at hospital.

Case No. 78-9095. Taken by Linnecke. Post Mortem at CME - Coroner.

Name of Deceased — David Randall Adkins; Date of Death — 7-24-78; Hour Pron. 0133.

Sex — M; Color or Race — Neg.; Age — 39.

Place of Death — California Hospital; Street Address — 1414 S. Hope St.; City or Town — Los Angeles; County — Los Angeles; Inside City Corporate Limits — Yes.

Usual Residence — 1200 E. 45th St.; Inside City Corporate Limits — Yes; City or Town — Los Angeles; County — Los Angeles; State — California.

Reported by Halloran; Address — LAPD — Newton; Phone 485-5261; Date 7-24-78; Time 0555; Pronounced Dead by Dr. Khoury.

Investigating Agency LAPD — Newton & DHQ; Officer Landry - Higby; Date 7-24-78; Hospital No. 119031.

Next of Kin ?; Houston, Texas ? Relationship ? Phone ? Notified by — Not; Personal I.D. By: LAPD.

/s/ J. Vondra
Deputy

Specify Accident or Homicide — Homicide? Place of Injury — Home. Injury at Work — No. Date of Injury — 7-24-78. Hour Approx — 0050.

Place of Injury — 1200 E. 45th St. Los Angeles.

Describe How Injury Occurred — As above, by police officer(s).

AUTOPSY REPORT

No. 78-9095

I performed an autopsy on the body of ADKINS, DAVID at DEPARTMENT OF CHIEF MEDICAL EXAMINER-CORONER 1104 N. MISSION RD., L.A. on JULY 27, 1978 @ 1000 hours.

From the anatomic findings and pertinent history I ascribe the death to: (A) ASPHYXIA. DUE TO OR AS A CONSEQUENCE OF (B) NECK COMPRESSION DURING RESTRAINING PROCEDURE.

OTHER SIGNIFICANT CONDITIONS — INTERSTITIAL MYOCARDIAL FIBROSIS.

*Anatomical Summary:*

1. Soft tissue hemorrhage around the neck organs.
2. Petechial hemorrhages in eyes, epiglottis, over the heart and lungs.
3. Acute passive congestion of lungs.
4. Subgaleal hemorrhage.
5. Abrasions and bruises over the body.
6. Fresh extraction of right lateral incisor tooth.
7. Fatty metamorphosis of liver.
8. Interstitial fibrosis of he [*sic*] myocardium

**Los Angeles Police Department Report on the Death of James Wright (Exhibit 46).**

CONFIDENTIAL
OPERATIONS-HEADQUARTERS BUREAU

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*PLEASE RETURN THE REPORT TO ROBBERY-HOMICIDE DIVISION AS SOON AS PRACTICABLE.* This report has a registered distribution. The Officer-Involved Shooting Team is responsible for maintaining a record of outstanding reports. The return of this copy of the report will be recorded.

THIS REPORT IS *NOT* TO BE REPRODUCED OR COPIED.

Robbery-Homicide Division Report of Law Enforcement Activity Related Death: DR 80-479 477; 647f P.C. SUSPECT, WRIGHT, James Cornelius (DECEASED); Male Negro, 41 years.

Involved Officer: H. J. STAENDNER, 21878 (OFF DUTY).

Date and Time of Shooting: March 7, 1980, 1720 hours.

Location of Shooting: Hollywood Roosevelt Hotel, 7000 Hollywood Boulevard.

Area of Occurrence: Hollywood Area R/D 643.

Officer-Involved Shooting Team: DETECTIVE II H. J. HALLORAN, 11494; DETECTIVE II R. D. IDDINGS, 12651.

*CONFIDENTIAL*

*THIS REPORT IS FOR THE CONFIDENTIAL USE OF THE CHIEF OF POLICE*

To: DARYL F. GATES, CHIEF OF POLICE

Sir:

*CHRONOLOGICAL NARRATIVE*

On Friday, March 7, 1980, at approximately 1500 hours, off-duty Hollywood Area, Field Services Division, Officer Hans J. Staendner, 21878, reported to the Hollywood Roosevelt Hotel, 7000 Hollywood Boulevard, Hollywood, to assume his duties as a plainclothes security officer. His primary function was to protect guests from being disturbed by trespassers, prostitutes, drunks and to prevent thefts.

Officer Staendner checked in with the hotel management, obtained a hotel security badge, various master keys and a hotel citizens' band, hand-held radio. The officer reviewed the security log from the proceeding watches at the hotel and completed his sign-in paperwork at the security desk. During the next hour, Officer Staendner made a visual check of the hotel corridors and the adjoining swimming pool area for burglary suspects and vagrants that frequent the hotel.

At 1630 hours, Officer Staendner proceeded to the basement service and delivery entrance where he made routine searches of the domestic staff and their belongings as they exited the hotel. The officer was primarily searching for items stolen from guests and hotel linens. Thereafter, Officer Staendner secured the delivery door, service door, and the back stairwell to the kitchen. At approximately 1655 hours, Officer Staendner walked into the Fashion Shop clothing store which is situated in the northwest corner of the main floor (north-south corridor).

Ingress-egress to the main floor lobby is gained via a double-hung glass door which is situated at the north end of a 12-foot wide, north-south carpeted corridor which opens onto Hollywood Boulevard. Access to the main floor lobby can also be gained via the Orange Drive entrance which is situated on the east side of the lobby. Ingress-egress to the Fashion Shop is gained via a single-hung door situated on the west side of the main corridor, 16 feet south of the Hollywood Boulevard entrance. Located on the east side of the corridor across from the Fashion Shop is a baggage desk utilized by the bellboys. Adjacent thereto is a tourist information booth with a telephone.

Officer Staendner conversed with the hotel manager, Abdul Hamed, and the clothing shop salesgirl, Connie Hoffman, for approximately fifteen mintues [*sic*]. Connie Hoffman requested the officer to escort her to the Crocker Bank at the southeast corner of Orange Drive and Hollywood Boulevard after she secured the Fashion Shop. Officer Staendner agreed. Ms. Hoffman walked south in the main floor corridor from the clothing shop to the hotel office to check out. The officer walked to a position on the east side of the corridor approximately 20 feet south of the aforementioned double-hung door. It was the officer's intention to wait for Ms. Hoffman at that location before going to the bank. Officer Staendner placed the hand-held radio on the tourist desk while he waited.

At approximately 1645 hours. West Traffic Division uniformed motor Officer F. J. Chamberlin, 13903, unit 6M2, observed a male Negro, later identified as James C. Wright, commit a traffic violation (21453b V.C., Jaywalking) at the intersection of Highland Avenue and Hollywood Boulevard. The officer stopped Wright and issued a traffic citation (M1250514). Officer Chamberlin noted that at the time he issued the citation Wright appeared to be distraught, in that

he refused to converse with the officer except to provide identification and address. Officer Chamberlin noted that Wright maintained a fixed stare, continually staring at him even after the citation had been completed and as the officer rode away on his motorcycle.

At approximately 1720 hours, Officer Steendner observed a male Negro, subsequently identified to him as James Cornelius Wright, enter the north-south corridor from Hollywood Boulevard. Wright walked south toward Officer Staendner's location at the tourist booth.

Due to Wright's dirty, unshaven and disheveled appearance, Officer Staendner opined that Wright was not a registered guest, but a transient who had wandered into the hotel from Hollywood Boulevard. The officer moved approximately three steps (4 feet) west to the center of the corridor. It was his intention to stop and question Wright relative to his presence within the hotel.

When Wright reached a point approximately 1½ feet north of the officer, he stopped. Officer Staendner inquired, "Are you a guest here?" Wright made a quarter turn to his left, east, and faced the officer. Wright yelled, "It's you again." (Based upon the exclamation, it can only be assumed that Wright erroneously believed Officer Staendner had issued the traffic citation, although the officer was in civilian attire.) Simultaneously, Wright swung his right fist in a wide, sweeping-type blow at the officer's head. Officer Staendner managed to parry the blow and grasped Wright's right arm at the mid forearm with his (Staendner's) left hand. The officer next grabbed Wright's left forearm with his right hand. Wright raised his hands and grabbed the lapels of Officer Staendner's leather jacket. (Staendner is 27 years of age, 6 foot 1 inch, 200 pounds.)

Wright lunged forward, south, and his momentum forced Officer Staendner off balance and rearward. Officer Staendner lost his footing and fell to the floor in a supine position with Wright on top of him. The officer maintained his aforementioned hold on Wright's forearms and Wright retained his grip on the officer's coat as they fell to the floor. Officer Staendner maneuvered his legs into a wrestler's scissors' lock around Wright's mid section. The hotel manager, Abdul Hamed, and the bell captain, Anthony D. Pope, observed the struggle and ran to the officer's assistance.

Mr. Hamed grabbed Wright's right arm with his hands and Mr. Pope grasped the suspect's left arm with his hands. It was their intention to break Wright's grip on the officer's jacket. It was estimated that they pulled on Wright's respective arms for a period of approximately thirty seconds before the hold was broken. Simultaneously, Officer Staendner rolled to his right, east, released the scissors' lock, assumed a kneeling position behind Wright and placed his left arm over Wright's left shoulder. He next extended his right forearm over Wright's suspended right arm (still held by Pope) and placed his right arm around the suspect's neck.

Hamed and Pope were yelling to Wright that Officer Staendner was a policeman and to stop fighting. Wright appeared oblivious to their statements. Officer Staendner shouted for someone to call the police and tell them that he needed a "back-up" and wanted additional policemen. The officer managed to apply a carotid-control hold with his right arm, the "V" in the area of Wright's larynx, thyroid cartilage. He locked his right thumb under his (Staendner's) left axilla, thus completing the locked carotid-control hold. Wright continued to struggle and grabbed at Officer Staendner's locked right arm with his hands while kicking in a northerly direction.

Jose Hernandez, a hotel maintenance employee, arrived on the scene and grabbed Wright's left leg with his hands to an attempt to assist Officer Staendner. Wright, who was still in a seated position, utilized Hernandez' hold on his left leg as a fulcrum, kicked out and downward (north) forcing Officer Staendner backward, south, into a supine position. The officer shouted for Hernandez to let go of Wright's leg, and he immediately complied. Hamed and Pope, who had retained their respective holds on Wright's arms, pulled the suspect back into a vertical sitting position on the floor. As the suspect was pulled back into a sitting position, Officer Staendner, who had retained his locked carotid-control hold, again resumed a kneeling position on the floor directly behind Wright. At this point, Wright was in a semi-seated position with his legs outstretched in a northerly direction.

When Wright continued to struggle, Officer Staendner applied more pressure to his hold as he shouted to Wright, "Get your feet out and put your hands on the carpet." Initially, Wright complied and the officer lessened the pressure on the control hold. Suddenly, Wright began pulling on Officer Staendner's right elbow, apparently in an attempt to break the hold and kicking outward with his feet. Simultaneously, he arched his back and again attempted to force the officer over backward into a supine position.

Officer Staendner increased the pressure on his hold in an attempt to subdue Wright. Wright continued to struggle, and it appeared to the officer that the control was ineffective as he could not render the suspect unconscious. Officer Staendner again stated, "Get your feet straight out and put your hands on the carpet." The officer continued to apply pressure to the control hold in an attempt to force the suspect to comply with his order. Suddenly, Wright complied; he placed his hands onto the carpet and ceased kicking. The

officer again lessened the pressure on his control hold and directed Hamed to notify the Los Angeles Police Department and insure that a unit was en route.

On five separate occasions, Wright raised his legs, arched his back and again attempted to force Officer Staendner over backward in an apparent attempt to break the control hold. On each attempt, the officer would increase the pressure on the hold and warn Wright to keep his feet out and his hands down.

When Hamed returned, Officer Staendner stated, "Go call Hollywood desk, not downtown, and tell them an off-duty officer needs assistance, not help." The officer also instructed Hamed to obtain the plastic handcuffs from the hotel security desk. At this point, Officer Staendner noted that Wright was no longer struggling and lessened the pressure on the hold. The officer was still apprehensive and believed that Wright was merely feigning unconsciousness.

When Wright went limp and it became apparent to Officer Staendner that the suspect was unconscious, the control hold was released. (It is estimated that the carotid-control hold has been applied for a period of between two and three minutes.) The officer rolled to his right and maneuvered Wright into a prone position on the floor.

He placed his left knee in the small of Wright's back and pulled Wright's left hand behind his back. Hamed returned and handed the plastic handcuffs to Officer Staendner. The officer placed the cuff on Wright's left wrist and then pulled Wright's right arm from beneath him. He next inserted the right hand into the cuff loop with the left hand. He pulled the loose end of the plastic cuff strap, thus tightening the strap and locking the tab in place.

As Officer Staendner stood up, he noted that Wright was not moving. He felt Wright's left wrist for a pulse and,

finding none, checked the left portion of the suspect's neck for a carotid pulse. Again, there was no evidence of a heartbeat. Officer Staendner instructed Hamed to phone for an ambulance and advised Pope to stay with the handcuffed suspect while he (Staendner) went into the clothing store to phone Hollywood station.

Officer Staendner telephonically advised the Hollywood Area, Field Services Division, uniformed watch commander, Sergeant G. Smith, 12932, of the situation and requested that a supervisor be dispatched to this location. The officer informed Sergeant Smith that he believed Wright was dead. Sergeant Smith relayed this assistance request to Communications Division at 1732 hours.

West Traffic Division uniformed Officer S. C. Chamberlin, 13903, unit 6M2, and Hollywood Area, Field Services Division, uniformed Officer J. Tomer, 15083, unit 6A46, arrived in response to an all-units, officer-requests-assistance radio call simulcast by Communications Division at 1733 hours. They immediately began cardio-pulmonary resuscitation, continuing same until Rescue Ambulance 27 arrived at 1740 hours.

Rescue ambulance 27 commenced mechanical CPR and transported Wright to Cedars-Sinai Hospital. Wright was accompanied in the ambulance by Hollywood Area uniformed Field Services Division Officer P. M. Kilcoyne, 20212, and Sergeant W. L. Woolway, 17266, 6L70. Wright failed to respond to treatment and expired at 1907 hours.

*INJURIES*

Los Angeles Fire Department rescue ambulance 27 received the alarm on March 7, 1980, at 1737 hours and arrived on the scene at 1740 hours. Upon the ambulance's arrival, Officers J. Tomer, 15083, and W. Sollie, 21444, were administering cardiopulmonary resuscitation (CPR) to

Wright. The ambulance personnel relieved the officers and continued CPR. Wright was subsequently placed into the ambulance and CPR was continued by ambulance attendant Wells and Officer P. Kilcoyne, 20212.

Wright was transported to the emergency ward, Cedars-Sinai Medical Center, 8700 Beverly Boulevard, Los Angeles, where Doctors Robert Bader and Susan Gardner administered emergency treatment for cardiopulmonary arrest. Wright failed to respond to treatment and expired on March 7, 1980, 1907 hours. Death was pronounced by Doctors Bader and Gardner.

On March 11, 1980, 1000 hours, Doctor Joseph Choi, Deputy Medical Examiner, Los Angeles County Coroner's Office, performed a post-mortem examination on the remains of Wright. During this examination, Doctor Choi noted the following:

1. Fracture of the left superior cornu of the thyroid cartilage,
2. Mild petechiae on the epiglottis and epicardium,
3. Acute pulmonary congestion and edema.

These anatomical findings would be consistent with the application of a carotid-control hold.

Toxicological analysis was completed which revealed Wright had 2.4 milligrams percent of Lidocaine in his blood.

On May 21, 1980, Doctor Choi completed the autopsy report. He ascribed Wright's death to acute cardiorespiratory arrest, due to/or as a consequence of the carotid control hold of the neck. Other conditions contributing, but not related to the immediate cause of death is non-specific cardiomyopathy. Doctor Choi classified Wright's death as accidental homicide.

*Officer H. J. Staendner*, 21878, complained of lower back and shoulder pain after the physical confrontation. He

was transported by Lieutenant M. O'Lear, 11977, to Queen of Angels Hospital, 2301 Bellevue Avenue, Los Angeles, on March 8, 1980, 0140 hours. Officer Staendner was examined by Doctor J. Ching who found tenderness to the lower right spine, diagnosis was lumbosacral musculus skeletal strain. Doctor Ching prescribed medication for pain and muscle relaxant and placed the officer off duty for four days.

Officer Staendner's duty status for March 8, 9, 12, 1980, was listed as "sick," and for March 10, 11, 1980, "regular days off." He returned to full duty on March 13, 1980.

*Officer J. L. Tomer*, 15083, drove himself to Queen of Angels Hospital on March 7, 1980, 2137 hours. He was examined by Doctor J. Ching for possible contact of infectious disease after giving mouth-to-mouth resuscitation to Wright. Doctor Ching ordered blood to be drawn from the officer and the Mantoux skin test given. All tests proved negative for infectious communicable diseases.

*NOTIFICATIONS*

On March 7, 1980, 1800 hours, Captain W. H. Cobb, Commanding Officer, and Lieutenant C. A. Higbie, Officer in Charge, Officer-Involved Shooting Investigations, Robbery-Homicide Division, were notified of the incident. Lieutenant Higbie assigned Detectives H. J. Halloran and R. D. Iddings to investigate. Lieutenant Higbie and the detectives responded to the scene from their residences. Lieutenant Higbie was in charge at the scene.

*PERSONNEL AT THE SCENE*

*Operations-West Bureau*

Commander G. A. Levant, Assistant to the Commanding Officer.

*Hollywood Area*

Lieutenant J. K. Troutman, 11810, 6W10; *Sergeant W. L. Woolway, 17266, 6L70; Sergeant R. L. Darnell, 16576, 6L60; Officer H. J. Staendner, 21878, off duty; Officer D. Frink, 16881, 6FB4; Officer A. D. Hancock, 17561, 6FB4; Officer R. G. McConnell, 21536, 6X38; Officer W. E. Sollie, Jr., 21444, 6X38; Officer V. Lucchesi, 16707, 6A31; Officer D. P. Kilcoyne, 21818, 6A37; Officer J. L. Tomer, 15083, 6A46; Officer B. L. Franks, 12426, 6A46; Officer L. R. Lopez, 16515, 6A15; Officer R. P. Thomas, 21123, 6A15; Officer P. M. Kilcoyne, 20212, 6Z1; Officer W. Carr, 21411, 6Z1; Officer D. G. Washburn, 21172, 6W77; Detective B. Skiles, 15872, 6W21; Detective B. F. Davis, 15025, 6W22; Detective R. L. Kuster, 12884, 6W20.

*West Traffic Division*

Officer F. J. Chamberlin, 13903, 6M2.

*Detective Headquarters Division*

Detective J. H. Recio, 12917, 1K2

*Scientific Investigation Division*

P. Garra, A9808, Photos

*Los Angeles Fire Department, Rescue Ambulance 27*

Wells, #83; Walker, #134.

*Los Angeles Fire Department, Engine Number 41*

Fireman Brook; Fireman Carbajal; Fireman Chapman; Fireman Curran.

*Los Angeles County District Attorney's Office*

T. Green, Deputy District Attorney; A. Ewing, District Attorney Investigator

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*1st field supervisor at the scene

*SUSPECT*

WRIGHT, James Cornelius, AKA: CORNELOUSE, James and MOORE, James, male Negro, 41 years, DOB: 10-22-38, 5' 9", 150 pounds, black hair, brown eyes, LA 1514987-W, B of I 443 464, FBI 910516F, address, 1740 North Hudson Avenue, Los Angeles.

Wright's criminal arrest record commenced in 1966 in Pittsburgh, Pennsylvania, where he was charged with and convicted of Larceny. Since that time, he has accumulated a two-page arrest record consisting of arrests for Theft, Auto Theft, Burglary, Prowling, Assault and Forgery. Wright's complete arrest record is as follows:

11-22-66 — Allegheny Co. W.H. Pittsburgh, Pa.; Larceny; 11½ - 23 mos. Disch by Par, served 11½ mos.

1-24-67 — Pittsburgh, Pa.; Larc of Auto; GL 11½ - 23 mos WH

1-29-68 — St. Louis, Mo.; CCW (Knife); Refuse Pros.

5-20-68 — St. Louis, Mo.; STL U50; War not RPL

9-30-68 — Allegheny Co. Pittsburgh, Pa.; Mal Prowling CCW; No dispo.

7-9-71 — Pittsburgh, Pa.; Burg/RSG; Disch 7-9-71

7-10-71 — Pittsburgh, Pa.; Burg/RSG; No dispo.

10-22-71 — State Regional Corr Fcl. Greensburg, Pa.; Aslt & Batt.; 9-18 mos by Allegheny Co. Crt to State Regional Corr Facility #5

1-2-74 — Bisbee, Ariz.; Loitering; 30 days Co. Jail.

10-21-76 — Ventura S.O. Ventura, Ca.; 459 PC (Burg); No dispo.

1-3-77 — Los Angeles P.D.; 459 PC; 3-4-77, 594 & 602J PC Misd; "A" dism. FOJ

3-23-77 — Bisbee, Ariz.; Dist the Peace; No dispo.

8-3-77 — LAPD; 470 PC, Fel Burg. No dispo.

9-16-78 — LAPD; 602L PC, Trespass; No dispo.

10-17-78 — LAPD; 459 PC; No dispo.
11-5-78 — LAPD; T/W; No dispo.
11-12-78 — Riverside S.O.; 459 P.C.; No dispo.
1-1-80 — LAPD; T/W; No dispo.
1-2-80 — LAPD; 4143 B&P No dispo.

Wright was not on current probation or parole.

A copy of Wright's arrest record is on file at Robbery-Homicide Division.

Other background history on Wright, although limited due to the Federal Privacy Policy Act of 1974, was obtained from the Arizona Department of Health Services, Division of Behavioral Health Services, on March 11, 1980. Their records reflect that Wright had been admitted to the Arizona State Mental Hospital on three separate occasions. During these instances, Wright was ordered to undergo treatment as a danger to himself and/or others.

Wright was initially admitted on February 15, 1974, and discharged on April 4, 1974. He was again admitted on April 7, 1977, with an unknown discharge date. Wright was admitted for the third time on December 14, 1977, and discharged on February 22, 1978.

On January 1, 1980, 2135 hours, Wright again demonstrated unusual behavior when confronted by Hollywood Area Officers J. J. Hazelton, 17790, and C. E. Algee, 14094. The officers completed a field interview card and learned that he had an outstanding traffic warrant. During the booking procedure, Wright was searched and officers recovered a dead mouse in his trouser pocket.

*EVIDENCE*

Property booked pertaining to this incident consists of personal property removed from Wright's clothing. Also booked were the plastic handcuffs removed from Wright's wrists prior to cardiopulmonary resuscitation. A copy of the Property Report is on file at Robbery-Homicide Division.

*WITNESSES*

*BARON, Josephine*, 8400 Sunset Boulevard, apartment 209, Hollywood, 646-9065, business, 469-2442, tape 79511. Baron is the director of personnel at the Hollywood Roosevelt Hotel. She was in the London Shop which is a part of the hotel and has a doorway to the hallway leading to the lobby off Hollywood Boulevard. She heard a "commotion" in the hallway and went to the door and observed Wright on top of Officer Staendner. It appeared to her that Wright was choking the officer. Officer Staendner was trying to push Wright off of him. She indicated it looked like Wright was hitting Staendner. She then observed Abdul Hamed and Anthony Pope attempt to pull Wright off of the officer. Wright was still fighting when he was pulled off Staendner. Officer Staendner then placed his arm around Wright's neck and Wright was still fighting. She then heard Officer Staendner tell Wright, "Stop fighting and put your arms on the ground and straighten out your legs."

The officer was then by himself as Hamed and Pope went to call the police. Wright continued to struggle while Staendner had hold of him. Finally, it appeared that Wright went limp and Hamed got some plastic handcuffs. Staendner placed the handcuffs on Wright.

Baron was then asked to remain calm (by interviewing officer) and attempt to recount the amount of time that passed from the time Staendner first placed his arm around Wright's neck until the time Wright stopped struggling. Witness estimated the time to be two minutes and thirty seconds.

*BRISTOW, Edward*, 7000 Hollywood Boulevard, room 801, Hollywood, 469-2442, tape 79511. Bristow is

employed by the Hollywood Roosevelt Hotel as a cashier at the front desk. At approximatley 1730 hours, he observed an altercation in the hallway near the Hollywood Boulevard entrance. Witness looked closer and observed that it was the hotel security (Staendner) and Wright. He indicated that it appeared Staendner and Wright were standing up wrestling with each other. He then called for help from other hotel employees via the hotel radio.

Bristow then observed Staendner strike Wright two times in the stomach and both were shouting at each other. Staendner then got Wright down onto the floor in a sitting position with his legs outstretched. Staendner was behind Wright with his arm around his neck. It apeared to Bristow when Wright would struggle, Staendner would apply pressure. He then heard Staendner tell Wright, "Put your hands on the ground and keep your legs out." At this point, Staendner asked Bristow to call the police. He indicated that Hamed used the hotel communications and asked the operator to call the police.

It appeared to Bristow that Staendner was tiring and Wright was still struggling. Staendner again asked him to call the police so he went to the desk and did so. When Bristow returned to Staendner's location, Staendner was still in the same position. Staendner asked for someone to call an ambulance. Bristow called an ambulance and when he returned to the location, Staendner was kneeling alongside Wright. Wright was lying on his back with his hands at his sides and he appeared unconscious.

Bristow is somewhat confused about the period of time Staendner had the hold applied with Wright struggling. (NOTE: Bristow was timed by interviewing of-

ficer to determine the length of time and it was three minutes and fifteen seconds.)

*HAMED, Abdul*, 1324 North Poinsettia Place, apartment 101, Hollywood, 876-8365, business, 469-2442, tape 79511. Hamed is employed as the manager of the Roosevelt Hotel. He observed Staendner leaning against the advertising machine in the hallway leading to Hollywood Boulevard and it appeared he was talking to Wright. When Hamed got closer to them, he heard Staendner say to Wright, "I have the right to ask you what you are doing." Then Wright screamed something indiscernible about the bathroom and Staendner asked him to be quiet. Hamed states Wright then hit Staendner real hard in the stomach. Staendner doubled up and tried to defend himself. Then they grabbed hold of each other and fell to the floor. Wright landed on top of Staendner and put both hands around his neck.

Hamed grabbed Wright's hand and pulled it away from Staendner's neck. Wright continued fighting and kicking. Staendner started to get up and stated, "I got him." At this point, Hamed asked Staendner if he should call the police. It appeared Staendner was still trying to control Wright, so Hamed had the hotel telephone operator call the police.

Staendner was then able to turn Wright around and put his right arm around Wright's neck and set him on the floor. Wright was still grabbing at Staendner's hands and face when Staendner told him to keep his hands down. Staendner then asked Hamed to get some plastic cuffs from the desk drawer. Hamed obtained the cuffs and gave them to Staendner. Hamed then observed Staendner put Wright's arms behind his back and put the plastic cuffs on. Staendner then let go of Wright and Wright fell to the floor. Hamed states the

incident took about three minutes and Wright looked like he was on something. Staendner then asked Hamed to call an ambulance.

*HERNANDEZ, Jose*, 1527 McCadden Place, apartment 1, Hollywood, 463-2569, business, 469-2442, tape 80188. Hernandez is employed as a maintenance man for the Hollywood Roosevelt Hotel. He was cleaning up in the main lobby at the time of the incident. He states he looked up and observed Staendner on his back on the floor with Wright on top of him. This was in the hallway that leads to Hollywood Boulevard. Wright was kicking and rolling around. Staendner had a hand on Wright's chin and then Staendner wrapped his arms around Wright's back. At this point, he believes witness Pope and witness Hamed each grabbed Wright's hands and helped Staendner get free.

Staendner and Wright got to their feet. Wright started to come at Staendner again and Staendner pushed him away. Wright came at him again and Staendner placed his arms around his chest. It appeared to Hernandez that Staendner had control of Wright at this time. Staendner asked someone to grab Wright's hand and Hernandez took hold of Wright's leg.

Hernandez states Staendner then placed his arm around Wright's neck, Wright was still struggling. Hernandez then let got [*sic*] of Wright's leg and went to the desk to tell them of the trouble. Hernandez states when he returned uniformed officers were entering the hotel.

*POPE, Anthony*, 1764 North Sycamore, apartment 311, Los Angeles, 874-4310, business, 469-2442, tape 79511. Pope is employed as a bellhop for the Hollywood Roosevelt Hotel. He had just finished taking some luggage out through the Hollywood Boulevard entrance/exit

doors and was reentering the hotel when he observed Staendner on his back on the floor. Wright was on top of Staendner and Wright had his left hand on Staendner's throat. Wright was yelling indiscernible statements. Pope and witness Hamed each grabbed one of Wright's hands and pulled them away from Staendner. At this point, Staendner and Wright got to their feet. Staendner stated, "Let me get behind him." Witnesses held onto Wright until Staendner was able to get behind him and place his arm around Wright's neck. Wright was still fighting and Staendner asked someone to call the police. Pope states at this time he went outside to see if the police were coming. He states when he returned Staendner was putting the plastic cuffs on Wright. At this point, Staendner stood up and asked someone to call an ambulance.

*COMMUNICATIONS*

Copies of communication tickets relative to this incident are on file at Robbery-Homicide Division. Tape recordings of witnesses are on file at Scientific Investigation Division, electronics section. All reports relative to this incident are on file at Robbery-Homicide Division.

Approved: /s/ C. A. Higbie
Lieutenant C. A. Higbie, Officer in Charge
Officer-Involved Shooting Investigations
Robbery-Homicide Division
9-4-80

**Selected Portions of the Autopsy Report of James Wright (Exhibit 18).**

EXAMINATION AT FORENSIC SCIENCE CENTER

Case No. 80 3230. Crypt No. 23.

REPORTED AS: Homicide, Officer Involved. Officer involved — Bar Arm.

Reported by Iddings; Address LAPD R-H; Date 3-7-80; Time 2035; Pronounced Dead by: Dr. Bader.

Name of Decedent. First — James; Last — Wright; Date of Death 3-7-80; Hour 1907.

Sex Male; Race Appears Negro; Date of Birth 10-22-38; Age 38.

Usual Residence — 1740 Hudson Av.; City or Town — Los Angeles; County — Los Angeles; State — Ca.

Place of Death — Cedar-Sinai; Street Address — 8700 Beverly Bl.; City or Town — Los Angeles; County — Los Angeles.

Specify Accident, Suicide or Homicide — Homicide; Place of Injury — Hotel Lobby; Injury at Work — no; Date of Injury 3-7-80; Hour — 1715.

Location — 7000 Hollywood Bl. Hollywood; Describe How Injury Occurred — as above.

NOTIFICATION — Next of Kin Unk. Elizabeth & Joseph Wright 3024 Van Croxx St or 3012 Van Cross St., Pittsburgh, Pa. Relationship Mother; Phone (412) 683-3835; Notified Yes by Teletype; Date & Time 3-8-80 0055; Teletype — Sent by Meyers of Sheriff's Teletype. Date, Time & Initials 3-7-80 2350; Personal notification — To be made by Meyers of LASO Teletype.

AUTOPSY REPORT

No. 80-3230

I performed an autopsy on the body of WRIGHT, JAMES at the DEPARTMENT OF CHIEF MEDICAL EXAMINER-CORONER Los Angeles, Ca. on March 11, 1980 @ 1000 Hours.

From the anatomic findings and pertinent history I ascribe the death to: (A) ACUTE CARDIORESPIRATORY ARREST. DUE TO OR AS A CONSEQUENCE OF (B) CAROTID CONTROL HOLD OF NECK.

OTHER SIGNIFICANT CONDITIONS — NON-SPECIFIC CARDIOMYOPATHY.

*Anatomical Summary:*

1. Fracture of left superior cornu of thyroid cartilage.
2. Petechiae on the epiglottis and epicardium, mild.
3. Acute pulmonary congestion and edema.
4. History of carotid control hold by an officer.

**Press Release on the Death of Larry Morris (Exhibit 21).**

June 18, 1980.

PRELIMINARY PRESS INFORMATION REPORT
LAW ENFORCEMENT ACTIVITY RELATED DEATH

On June 17, 1980, at approximately 10:50 P.M., Southeast Area uniformed Officers Arthur R. Wagner (28 years of age, an 8-year veteran of the force), and Joseph J. Pau (36 years of age, 3½ years with the department), had just completed a non-related robbery investigation in the 500 block of West 92nd Street, Los Angeles. The officers were proceeding west on 92nd Street when they heard what sounded like several gunshots emanate from the apartment complex at 634 West 92nd Street.

The officers observed several male adults on the driveway and believed one of the individuals to be armed. Officer Wagner alighted from the police vehicle with a departmental shotgun, ordered the individuals to raise their hands and they complied. The officers next observed Larry E. Morris, 29 years of age, rapidly ascend the stairway to the second story and enter apartment 11. Officer Wagner, who believed Morris was armed, replaced his shotgun into the police vehicle, drew his service revolver and went in foot pursuit of the suspect. Officer Pau requested a back-up unit.

When Officer Wagner arrived at the door of apartment 11, David M. Morris, 24 years of age, Larry's brother, twice struck the officer in the face with his fist. Officer Wagner drew his baton and struck the suspect, inflicting a laceration to the forehead. David Morris then ran to the bathroom and joined his brother Larry, where they barricaded themselves.

The officers effected a forced entry into the bathroom and attempted to take Larry into custody. A physical alter-

cation ensued, wherein the officers utilized their batons, and on several occasions unsuccessfully attempted to apply a carotid control hold. Apparently, due to the small confines of the room and the exceptional strength of the suspect, the officers were unable to restrain Larry Morris. At one point, Officer Wagner's now-holstered service revolver was either dislodged or fell to the floor. When Larry Morris attempted to recover the weapon, Officer Pau and the suspect fell onto the side of the bathtub. At this point, David Morris, who had not been involved in the physical altercation in the bathroom, exited the apartment.

The officers managed to subdue Larry Morris, whose hands were then manacled behind his back. At this point, the suspect appeared to be unconscious, and responding officers applied cardiopulmonary resuscitation while awaiting the arrival of an ambulance. Morris failed to respond and expired at the scene at 11:05 P.M.

David Morris was taken into custody a short time later and transported to Gardena Memorial Hospital where he was treated for a laceration to the forehead. He was later booked at Southeast station charged with 243 P.C. (Battery upon a Peace Officer).

Officers Wagner and Pau were treated for back injuries at Daniel Freeman hospital and released. However, they were placed off duty for an indefinite period.

A search warrant was obtained, authorizing a search of the Morris apartment. During the search, a small quantity of marijuana was recovered. There were no weapons or ammunition recovered. Apparently, the sounds the officers initially believed to be gunfire were caused by exploding firecrackers, which is based upon witnesses' statements and firecracker residue found in the driveway.

It is unknown what may have precipitated Larry Morris' unusual behavior. The cause of death and the existence and type of drugs, if any, is unknown at this time pending an autopsy to be performed by the Los Angeles County coroner's office at a later date.

The investigation is being conducted by Southeast Area detectives under the direction of Captain W. O. Gartland.

Lieutenant C. A. Higbie, Officer in Charge
Officer-Involved Shooting Investigations
Robbery-Homicide Division

**Selected Portions of the Autopsy Report of Larry Morris (Exhibit 20).**

CASE REPORT

Case No. 80-7810 Crypt No. 64.

Reported as: Homicide. Officer involved. Collapsed during altercation with Police Officer — ETOH apparent — poss use of drugs — poss aspiration vomitus.

Reported by Officer Martinez. Address — LAPD-DHD. Date — 6-18-80; Time 0102. Pronounced Dead by: LAFD RA #64. EAP #755072.

Name of Decedent: First — Larry; Middle — Eugene; Last — Morris. Date of Death 6-17-80. Hour Pron 2305.

Sex — M.; Race Appears — Negro. Social Security Number — 431-90-4107. Date of Birth 12-24-51; Age 28 years.

Usual Residence: 634 W. 92nd St.; Apt. #11, City or Town — L.A.; County — L.A.; State — CA 90044.

Place of Death — Residence; Street Address — 634 W. 92nd St.; Apt. #11; City or Town — L.A.; County — L.A.

Place of Injury — Inside Apt Residence; Injury at Work — No; Date of Injury-Month, day, year — 6-17-80; Hour — Approx. 2245; Location — 634 W. 92nd St., Apt. #11, L.A. Describe How Injury Occurred — As Above.

Notification. Next of Kin Thelma Morris; Relationship Mother; Phone 678-9697; Notified — Yes by Called in. Mtr. Ada Madison, 1211 No. 13th St. — Ft. Smith, Ark.; Telephoned to scene/notified by unknown persons.

Identification — Personal OR by: Family to LAPD; DLE Photo.

AUTOPSY REPORT

No. 80-7810

I performed an autopsy on the body of MORRIS, LARRY at the DEPARTMENT OF CHIEF MEDICAL EXAMINER — CORONER, Los Angeles, California on JUNE 20, 1980 @1030 HOURS.

From the anatomic findings and pertinent history I ascribe the death to: (A) [CARDIAC ARREST DURING PHYSICAL ALTERCATION DUE TO OR AS A CONSEQUENCE OF ARTERIOSCLEROTIC HEART DISEASE AND BLUNT FORCE INJURIES TO THE NECK AND SOFT TISSUES].

*Anatomical Summary*:

I. Arteriosclerotic cardiovascular disease.

A. Focal moderately-severe occlusive coronary arteriosclerosis of left anterior descending coronary artery.

B. Mild to moderate arteriosclerosis of the right main, left main, and left circumflex coronary arteries.

C. Left ventricular hypertrophy and dilatation.

D. Moderately-severe myocardial fibrosis.

E. Acute passive congestion of the viscera.

F. Pulmonary edema and congestion.

II. Terminal aspiration of gastric contents following episode of vomiting and collapse, by history.

A. Attempted cardiopulmonary resuscitation, by history.

B. Petechial hemorrhages of the bilateral conjunctivae and undersurface of the scalp. (No petechial hemorrhages of the buccal mucosa or post-auricular regions.)

III. Multiple ecchymoses and abrasions of the skin and subcutaneous tissue of the trunk and upper and lower extremities of recent origin and due to blunt force trauma.

A. Patterned ecchymoses to the left posterior thigh and trunk region.

IV. Injuries to the neck, neck organs, and cervical spine of recent origin and due to blunt force trauma.

A. Linear ecchymosis of the skin of the right anterior neck.

B. Superficial crescent-shaped abrasions consistent with fingernail type abrasions of the right lower anterior neck.

C. Soft tissue injuries to the posterior and posterolateral neck.

D. Soft tissue injuries to the anterior left shoulder and anterior neck.

E. No fractures of the laryngeal cartilages or hyoid bone.

F. No petechial hemorrhages of the laryngeal mucosa.

G. Slight hemorrhages into the cervical paravertebral musculature, interspinous ligament, and region of the right vertebral artery.

H. Slight subdural hemorrhagic staining of the cervical spinal cord at C-2 but no evidence of significant traumatic injury.

V. Injuries to the head region of recent origin and due to blunt force trauma.

A. Multiple cutaneous abrasions and ecchymoses of antemortem origin.

B. Postmortem shaving artifact and superficial incised wounds.

C. Hemorrhage into the right temporal muscle and undersurface of the scalp, and minimal hemorrhage into the subarachnoid region.

VI. Moderately - severe fatty liver.

VII. Perivenous hemorrhage of the left antecubital fossa and 1/32 inch scab of the left antecubital fossa over the antecubital vein without underlying perivenous subcutaneous hemorrhage or fibrosis.

**Press Release on the Death of Robert Cameron, December 21, 1979 (Exhibit 17).**

LAW ENFORCEMENT ACTIVITY-RELATED
CRITICAL INJURY

PRELIMINARY PRESS INFORMATION REPORT

On December 20, 1979, approximately 10:20 P.M., West Los Angeles Area, Field Services Division uniformed Officers James M. Witowski (36 years of age, a 6-year veteran of the force) and Thomas M. Brooks (32 years of age, 3½ years with the department) observed a vehicle being driven erratically in the 1700 block of La Cienega, Los Angeles. The officers stopped the vehicle, after which the driver, Archmedes O. Jimenez, 39 years of age, originally from the Philippine Islands, presently a resident of Los Angeles, exited his vehicle.

Shortly thereafter, his companion, a 32-year-old male (name withheld pending notification of relatives) [Robert Cameron] alighted from the vehicle and attempted to stab Officer Brooks with the handle portion of a hair brush. Officer Brooks knocked the suspect to the ground as Officer Witowski took Jimenez into custody without incident.

During the ensuing struggle with Officer Brooks, the suspect managed to discard a paper bindle which was later recovered and contained narcotics. The suspect, who appeared to have superhuman strength, managed to struggle free from Officer Brooks. Officer Witowski moved behind the suspect and attempted to apply a carotid control hold. However, during the struggle, the officer was unable to complete the hold, which he then modified to a semi-, bar-arm control hold. Simultaneously, the suspect and the officer fell forward onto the ground, thus enabling Officer Witowski to apply and secure a carotid control hold.

Shortly thereafter, additional police units began arriving at the scene and the suspect was subdued and his hands manacled behind his back. The officers applied a cord-cuff leg restraint as he again began to struggle. As he continued to struggle, he broke the leg restraint. The suspect's ankles were then manacled with a pair of handcuffs and the suspect was carried to and placed on the rear seat of the police vehicle.

As Officers Witowski and Brooks proceeded toward West Los Angeles station, they noted that the suspect did not appear to be breathing. They activated the red lights and siren and proceeded a short distance to L.A. New Hospital. Upon their arrival, the suspect was treated and his condition improved. He was later transported by ambulance to the Los Angeles County-USC Medical Center.

Upon his arrival, it was determined that the suspect had suffered from a cardiorespiratory arrest and his condition is presently listed as "critical." He has been booked into the jail ward, charged with 245b P.C. (Assault with a Deadly Weapon upon a Peace Officer).

During the preliminary course of the investigation on La Cienega, a small quantity of drugs were observed in the interior of the vehicle. West Los Angeles area narcotic detectives later obtained a search warrant from Judge David Perez, Division 91, West Los Angeles Municipal Court, authorizing a search of the vehicle's contents. Varying quantities of heroin, cocaine, hashish, quaaludes, marijuana, Tai sticks and lysergic acid diethylamide (LSD), the street value of which is estimated to be between $7,500 and $10,000 were recovered. Jimenez was booked at West Los Angeles station, charged with 11351a Health and Safety Code (Possession of Cocaine for Sale).

Medical personnel at Los Angeles County-USC Medical Center indicated that the suspect's unusual behavior was consistent with a drug overdose. However, at the time of this report, it is undetermined if his condition is the result of a drug overdose, the application of the aforementioned control holds, or a combination thereof.

Officer Brooks sustained a minor laceration to his hand and Officer Witowski, an abrasion to the chin. The officers were also treated at L.A. New Hospital, released and returned to duty.

The investigation is being conducted by West Los Angeles narcotics detectives under the direction of Captain William Burke.

Lieutenant C. A. Higbie
Robbery-Homicide Division

**Selected Portions of the Autopsy Report of Robert Cameron (Exhibit 16).**

CASE REPORT

Case No. 80-360. Crypt No. 21A. Reported as: Natural; In Custody.

Stopped by LAPD officers for traffic, on 12-20-79. Reportedly had a knife. Subdued — choke hold. Poss. on P.C.P.

Reported by Avila; Address LASO; Phone 181-5463.

Date 1-7-80; Pronounced Dead by: Dr. Humphrey. Agency Notified: LAPD, W. LA; Officer Varner. Date & Time 1-7-80.

Name of Decedent — Robert Cameron. Date of Death 1-7-80. Hour 2130.

Sex — M; Race — Cauc.; Age — 32 years.

Usual Residence — 18437 Keswick St.; City or Town — Reseda; County — Los Angeles; State — Cal.

Place of Death — Jail Ward — LAC-USC Med.; Street Address — 1200 N. State St.; City or Town — Los Angeles; County — Los Angeles.

Notification — Next of Kin Desmond Cameron; Relationship — Father; Phone — 785-7630; Notified — Yes by Hosp.; Time 1-7-80.

Identification — Personal OR by: HOSPITAL TAG.

NE — to Select Mortuary. Release Here — No. Vitals Here — No.

/s/ J. Vondra
Investigator

AUTOPSY REPORT

No. 80-360

I performed an autopsy on the body of CAMERON, ROBERT at DEPARTMENT OF CHIEF MEDICAL EXAMINER-CORONER; 1104 NO. MISSION RD., L.A. on JANUARY 9, 1980 @ 1130 Hours.

From the anatomic findings and pertinent history I ascribe the death to: HYPOXIC ENCEPHALOPATHY DUE TO RESPIRATORY ARREST, FOLLOWING STRUGGLE WITH POLICE OFFICERS WHILE IN STATE OF ACUTE ETHANOL AND COCAINE INTOXICATION.

*Anatomical Summary*:

1. Hypoxic encephalopathy.
2. Pulmonary congestion and edema.
3. Congestion of viscera.

**Reporter's Transcript of Proceedings. Los Angeles, California, December 18, 1980.**

United States District Court, Central District of California.

Honorable Robert M. Takasugi, Judge Presiding.

(Title omitted in printing).

No CV 77-420-RMT.

APPEARANCES:

For the Plaintiff:

MICHAEL MITCHELL
Warner Center — 4th Floor
5850 Canoga Avenue
Woodland Hills, California 91367

For the Defendants:

BURT PINES
City Attorney
By: LEWIS N. UNGER
Deputy City Attorney
1700 City Hall East
200 North Main Street
Los Angeles, California 90012

LOS ANGELES, CALIFORNIA; THURSDAY, DECEMBER 18, 1980; 10:50 A.M.

* * *

THE CLERK: CV 77-420-RMT, Adolph Lyons vs. City of L.A., et al.

MR. UNGER: Good morning, your Honor. Lewis Unger for the defendants.

THE COURT: Good morning.

MR. MITCHELL: Good morning, your Honor. Michael Mitchell for the plaintiff.

THE COURT: Good morning.

Prior to addressing the substance of the issues involved in reference to plaintiff's motion for injunctive and declaratory relief, I think the Court must rule on numerous evidentiary matters. I do have some questions regarding some of the matters objected to. Other than that I am ready to rule.

Counsel, do you wish to be heard on the evidentiary issues?

MR. MITCHELL: With respect to the ones that trouble the Court, if you would like us to give argument on those I think it would be appropriate, but otherwise I think our briefs pretty well cover what our objections are.

MR. UNGER: I would like to discuss some of the objections. Obviously as far as the objections to defendants' exhibits and statements in affidavits, we have not had an opportunity to discuss this with the Court because there was no followup brief. I would like, depending upon where the Court is going, what the Court is going to exclude, I would like to be able to present oral argument on that issue.

THE COURT: Are you talking about the recently filed matters?

MR. UNGER: I am talking about the matters in which the plaintiff has objected to. I believe there is a document that he has submitted, which was a notice in opposition to certain of the defendants' exhibits or parts thereof, dated — I have a document in front of me where he is objecting to certain parts of affidavits as hearsay, and certain exhibits. Not knowing the Court's ruling on the various objections, and of course depending upon what the ruling is and what specific exhibits or declarations the Court might be ruling to not allow in as evidence, I would like to present oral argument on those points.

THE COURT: I think I interpret what you are saying. What you are saying is that if I rule adversely to you then you would like to argue about it?

MR. UNGER: I think that's one way of saying it, your Honor. On the evidentiary issues.

THE COURT: Yes. When we get to the objections to —

MR. UNGER: Your Honor, may my law clerk sit next to me to help me prepare?

THE COURT: Yes.

MR. UNGER: This is John Ergo, who as of yesterday was sworn in and is no longer a law clerk.

THE COURT: Welcome, sir.

MR. MITCHELL: Your Honor, I would like my client to come up here, Mr. Lyons.

THE COURT: Based on the statement of counsel for the defendants the Court is ready to rule on the following: With respect to the plaintiff's motions to strike testimony, let's take first the declaration of Pascal Kenneth Dionne. Mr. Dionne testifies that based upon his recollection there were no injuries sustained due to control holds at the police academy during the period of January 1974 to November of 1976. The objection was based upon the fact that Mr. Dionne does not have personal knowledge; and, further, that Mr. Dionne admits that the records of the injuries were thrown away, as reflected on Page 7 from lines 3 through 13.

Plaintiff further contends that Mr. Dionne's testimony regarding the frequency of the bar arm hold, as compared to the carotid hold, should not be allowed. He tells that Mr. Dionne indicated or had admitted that it was very difficult to distinguish which hold was used, and the records of such holds were sketchy at best.

A further objection was that Mr. Dionne had indicted that there were no altercation reports from February 1979 to July 1980 which mentioned that — and yet there were four individuals who did die during that period of time.

The plaintiff further indicates that Mr. Dionne is not exactly an impartial witness.

The Court rules that those matters go to the question of information in the mind of Mr. Dionne as he reaches for an opinion as an expert in the field of self-defense.

There is also the statement of Mr. Dionne that he had seen holds used and no injuries resulted. However, he did admit that he never had seen a bar arm hold used.

That is also a question of weight and therefore admissible.

Then we come to the statements made by Mr. Dionne regarding the effect of PCP, and his admission that he has no personal knowledge of PCP or the reactions of people who perhaps may be under the influence of such a drug.

This is obviously beyond the expertise of Mr. Dionne and certainly is a conclusion of the witness, and on that basis is denied — or the objection is sustained.

With respect to the statement that the Los Angeles Police Department is considered innovative and that it is a progressive police department, and, further, with respect to reputation of the Los Angeles Police Department, to those matters the objection is sustained as a conclusion of the witness.

We then get to the survey conducted by Mr. Dionne of other police departments wherein he states that 90 percent of other police departments use the carotid hold, and 53.33 percent use the bar arm hold, he does admit in his deposition that the survey was conducted in a confused and unreliable manner.

The statement is received. It is a question of weight.

He further states, and the plaintiffs challenged the statement, that the techniques of self-defense were designed by experts in martial arts, wrestling, boxing, and study of the human anatomy, and they all agree if correctly applied there should be no aftereffects or injury.

Plaintiff counters that contention by citing the admissions or the admission made by Mr. Dionne that his knowledge is limited to the period from April 1978 to the present.

This matter is admitted as the basis for his opinion and it becomes a question of weight.

He further states and admits that assuming ten persons have died from the use of a stranglehold, it could be because either the holds were applied incorrectly or the suspects struggled, thereby causing the death. Which really means that even if properly applied the holds could have resulted in death.

Expert opinion. It's received.

Likewise, a statement that the improper application of holds was the cause of most of the injuries — obviously there is no personal knowledge. It's expert opinion, it is a question of weight.

With respect to the statement of the number of injuries being miniscule, he has no basis for such a conclusion as far as the document presented to the Court. The objection is sustained.

There is a further objection by the plaintiff with respect to Mr. Dionne's statement that if the holds were eliminated greater force would be necessary, i.e., the use of batons and other methods, and thereby causing a greater injury. However, in the deposition of Mr. Dionne, as plaintiff cites, he could not predict if the injuries would be greater. It is received as an opinion. It is certainly a question of weight.

With respect to Mr. Dionne's assertion that the results of all studies regarding control holds reduces injuries, as opposed to other control methods, that is a fact that Mr. Dionne had used in reaching his opinion; and whether that opinion is convincing, or not, is a question of weight, and therefore that is admissible.

Plaintiff objects to the admission of 1970 and 1975 studies of control holds, contending that the 1970 study is incomplete, and also that there were no statistics available as to the injuries incurred and the risk of death.

Plaintiff further contends that the 1975 study mentions that the bar arm control was an unconsciousness-rendering hold, while other medical experts testified that it could never render unconsciousness. Once again, it is an opinion. And his testimony about the fact that he has read many books and has found no methods better, is an expert opinion, it is admitted. It is a question of weight.

We then get to the declaration of Mr. Kowai, who opinionizes that the control holds are acceptable. Plaintiff contests that particular conclusion by indicating that Mr. Kowai never reviewed autopsy reports of stranglehold deaths, and that his exposure to holds was restricted to practices in judo. Further, Mr. Kowai has indicated that in judo it is necessary to be careful not to close the windpipe with the bar arm. And yet that is the stated purpose for the bar arm as used by the law enforcement officers. It is admissible as an opinion of the expert. It certainly is a question of weight.

With respect to Mr. Kowai's statement that judo holds are acceptable, based upon his experience as chairman of the International Judo Federation Medical Subcommittee — I don't really know what that means, being chairman of the association. There is no elaboration on that. Objection sustained.

He further makes a statement that if the control holds are properly administered the injury, if any, would be minimal, in judo contests. Opinion testimony. It is admitted. It is a question of weight.

Mr. Kowai further testifies that to prevent injury it is important to release the pressure when the suspect stops resisting or becomes limp. He further indicated that it is possible when the carotid hold is applied the suspect can injure or kill himself through involuntary struggle or convulsions, which could be mistakenly perceived by the law enforcement officer as a move of resistance or an aggressive move. That's received.

He further states that in judo the contestant regains consciousness naturally and spontaneously and without difficulty in a period of something like ten to twenty seconds. That is admitted.

We now come to the declaration of Dr. Hanks. He testifies that he participated in and personally carried out autopsies on fatal cases of injury. Plaintiff cites the fact that Dr. Hanks has not conducted any autopsy since 1946, and in his whole life he has conducted three autopsies. That is admitted. It is a question of weight.

Dr. Hanks further stated that he is advised whenever a death or critical injury occurs. However, he was not informed of the deaths of the nine of the ten stranglehold victims; and respecting the tenth person he was not told that a neck restraint was utilized. Admitted. It becomes a question of weight.

Dr. Hanks further testified that in his experience as a medical director —

MR. MITCHELL: That was withdrawn, your Honor.

THE COURT: Pardon me?

MR. MITCHELL: That was withdrawn, the objection to that.

THE COURT: Thank you. It is admitted.

Dr. Hanks further states that none of the signs or symptoms of asphyxial death have been observed from use of restraints. Plaintiff asserts that Dr. Hanks' ignorance of the nine of the ten deaths shows that his conclusions are not reliable. It is admitted. It is a question of weight.

Dr. Hanks further states that in New York over a 30-year history, in no instance was such hold considered to be contributory to death. We also have a recruit training officer in New York who states that over 23 years only one fatality was involved, and that was the result of a blow to the head by a baton.

I do not know whether his particular information in the possession of Dr. Hanks was used to reach the ultimate conclusion supporting the holds we are talking about here. Likewise, with respect to the statements made by the recruit training officer. Absent that foundation the objection is sustained.

Dr. Hanks further states that a baton would have to be used if the holds are barred, and that the use of the baton would be more dangerous. The objection is sustained. This is going beyond the expertise of a medical director, and absent any foundation regarding the knowledge of alternative forces the objection is very well taken.

MR. MITCHELL: Is that sustained with respect to Page 5, lines 15 through 23, your Honor?

THE COURT: Yes.

MR. MITCHELL: Thank you.

THE COURT: Page 6, lines 17 to 21: Dr. Hanks states that doctors use carotid holds with patients with cardiac irritability and that there were no hazardous results. That

is offered as a basis for his opinion, and his opinion is also a question of weight.

Page 6, lines 27 through 28, and Page 7, lines 1 to 2: Dr. Hanks testifies that in the use of the carotid hold the head is stationary so no severe injury is possible in relation to the spine. However, in his deposition Dr. Hanks admits that even if the head is fixed the body can rotate, and he testifies that that's, quote, very bad, unquote. That's admitted. It is a question of weight.

On Page 7, line 12: "Experience repeated thousands of times . . . has indicated that the holds in question are safe as compared with almost any alternative control methods."

I don't know what he is talking about in terms of "thousands of times." Is he referring to some source of information? I don't know. The objection is sustained.

We come to the declaration of Raymond Sua, S-u-a, an instructor in basic self-defense for the Los Angeles Police Department.

Plaintiff asserts that Mr. Sua is a karate expert, and the holds involved here are judo holds. Plaintiff further contends that Mr. Sua's training in the holds is not very extensive. And, further, in his deposition it turns out he was responsible for modifying bar arm holds because of the death attributed to it, but he was unaware of exactly how the death had been caused.

MR. UNGER: Excuse me, your Honor. I think that is Mr. Jarvis we are talking about, not Mr. Sua, if I am not mistaken.

THE COURT: I will get to Mr. Jarvis.

MR. UNGER: Very well, your Honor.

THE COURT: And Mr. Sua further indicated that he never had a stranglehold applied upon him. This is admitted. It also is a question of weight.

Page 2, lines 20 to 25: Mr. Sua apparently is concluding as a martial arts expert that the various carotid holds are the most humane method of control and least likely to result in injury. In his deposition Mr. Sua states that the Taser and Chemical Shield methods are less injurious. He further states that the academy has never sought to learn if the carotid hold results in more or fewer deaths; and while he is concerned about that particular issue he has never made any inquiries. That is admitted.

Page 3, lines 16 to 19 and lines 21 to 23: Mr. Sua states that the bar arm policy should only be used when the carotid hold cannot be applied. Apparently there are no objections. That portion is admitted.

Page 3, lines 23 to 26: He states that the bar arm hold had been used on numerous occasions with no resulting injury. In his deposition he states that he had seen it applied 15 to 20 times. That's admitted, also. It is a question of weight.

Now we get to Mr. Robert Lee Jarvis, a physical training and self-defense instructor during the period from April 1968 to February 1980.

Plaintiff contends that Mr. Jarvis has never testified as an expert about holds and that he has never published anything about them.

The matter is admitted.

On Page 3, lines 6 and 7, he states that he has used the bar arm and the carotid hold combination successfully in judo matches, and the plaintiff indicates that the judo match is substantially different from a police/citizen confrontation. It is admitted. It is a question of weight.

Page 3, lines 12 to 15: Mr. Jarvis indicates that the bar arm hold has been applied on numerous occasions and the subject was unhurt as a result thereof. But in his deposition,

as plaintiff cites, Mr. Jarvis testified that he has seen it on two or three occasions. Again, it is admitted. It is a question of weight.

Page 3, line 19 through 22: Mr. Jarvis testified that the bar arm control is more humane than the baton or kicks. He, however, states that he knows of no statistics of injuries or death due to baton or kicks. The objection is sustained as speculative.

Now we get to Dr. Dodge who is a neurologist, who observed the Los Angeles Police Department trained instructors applying various holds.

Plaintiff contends that when those holds were used they were applied for only a few seconds and did not involve any violent struggle. Secondly, that those demonstrations were under ideal conditions and certainly unrealistic when compared to how it may be performed on the streets. That, again, is admitted. It is a question of weight.

Page 3, lines 12 to 16, lines 18 to 24; Page 4, lines 5 to 7, and lines 18 to 25; and Page 5: Dr. Dodge testifies that the danger of death is remote that cardiac arrest or death would occur from either the carotid or the bar arm hold. Admitted. It is a question of weight.

Page 3, lines 16 through 24: Dr. Dodge, once again, states that when pressure is put on the neck, as in the case of a carotid hold, the pressure is diffuse and thus insufficient to cause the cardiac arrest. But in his deposition Dr. Dodge states that the carotid artery is easily accessible below the jawline and is only protected by a sheath of subcutaneous tissue. Plaintiff further cites the fact that the sternocleidomastoid muscle does not protect the sheath in which the carotid artery is contained. This is admitted. It is a question of weight.

Dr. John Dodge further testifies that the cases of respiratory injury or death are few when one considers the frequency of confrontation.

The Court reads plaintiff's assertion that the doctor did not have personal knowledge of the frequency of the confrontation, and on that basis the objection is sustained.

Page 6, lines 4 to 6: Dr. Dodge states that the bar arm control hold, although carrying a certain degree of risk to the respiratory system, will in most occasions not result in injury. This is evidence used by the doctor in the formation of his ultimate opinion.

We then get to the declaration of Mr. Kuboto, who is a consultant to the Los Angeles Police Department, worked with the FBI and the Tokyo Police Department as a martial arts expert.

Plaintiff contends that Mr. Kuboto did not demonstrate that he was clear about the Los Angeles bar arm policy, because he was unaware that the policy includes applying bar arm pressure directly to the front of the throat, i.e., the trachea. And, further, that Mr. Kuboto's experience is limited to controlled settings in sports. And the final statement regarding Mr. Kuboto's testimony is that Mr. Kuboto cannot say whether the bar arm hold involves a high risk of death. That's received. It is a question of weight.

We now have defendants' objections to plaintiff's proposed exhibits.

We have Exhibit Number 1, the deposition of Mr. Adolph Lyons dated June 9, 1977. The deposition outlines an horrendous experience suffered by Mr. Lyons with the police. He alleges that he was charged with driving with his lights off, and he was choked, and as a result there were physiological reactions like urination and defecation.

This is admitted in that the conduct of the police may be a part of the city's official policy.

Exhibits 14 and 15 consist of the coroner's report on Mr. Turk and the sheriff's report on the death of Mr. Turk.

Mr. Turk was choked by a security officer at LAX. Plaintiff has not shown that the officers used techniques which were then approved and authorized by the city. The objection is sustained.

Exhibit 23 is a coroner's report on Rudy Garcia, who was choked by the Pomona police. There was no showing that a bar arm hold was used. Objection is sustained on the basis of irrelevancy.

Exhibit 24 is the coroner's report on Attorney Brown. Mr. Brown was choked by a Sears' security guard. What kind of a hold was used we have no information on that. That objection is sustained. Once again, on the basis of irrelevancy.

Exhibit 25 Coroner's report on Harold T. Harris, who died after being choked by the Compton Police Department. The same ruling as the previous coroner's reports.

Likewise, with respect to Exhibit 26 pertaining to a Mr. William Prieto, who was apparently choked by a private citizen.

And Exhibits 32 and 33, Tegner on Nerve Centers and Pressure Points; and McGrath, "Is It True What They Say About Choke Holds?" It is hearsay. Objection sustained.

Exhibit 42 is the one that is somewhat confusing. That's the deposition of Deputy Chief Ritter, R-i-t-t-e-r —

MR. MITCHELL: Your Honor, could we have an opportunity just for a moment or two to address the Court with respect to this deposition?

The deposition, of course, was not taken in this case; it was taken in the case of Ford v. Los Angeles; the parties

plaintiff were different. The parties defendant were exactly the same. A city attorney for the City of L.A. was present during that deposition, and it involved a choke hold death of Booker T. Ford, Jr. Counsel and I agreed, prior to commencing discovery in this case, that with respect to any declarations which we submitted on behalf of our experts, that we would offer the other party an opportunity to depose that expert as a condition for offering the declaration. I don't offer Chief Ritter as an expert, I don't offer any declaration on his part; I offer these statements as admissions against interest, and statements against interest made by this very, very high-ranking police officer in another proceeding where he was represented by counsel.

THE COURT: Any response?

MR. UNGER: The same objection noted, your Honor, on Page 17, this was not really a stipulation of counsel on this case. And also the Court is provided with few parts of the deposition. I don't have the entire deposition. It is impossible to put it in context to determine where these statements are occurring, in what part of the deposition, and I still contend that it is hearsay.

THE COURT: Obviously in view of Exhibit 42, and if it were taken out of context, then you were under an obligation to provide the Court with that information. What are you saying — that you didn't have the opportunity or the time?

MR. UNGER: No. What I am basically saying, your Honor, is that we had come to an agreement on this case, and the only depositions to be submitted in this case would be those persons who were submitting affidavits of declarations in support of or in opposition to the issue of a preliminary injunction. It is not a matter of time. I feel that it is hearsay, I feel that it is outside the agreement of counsel

regarding this case, and it should not be admissible on that point. I think it is a very small probative matter, anyhow, but I don't think it should be admissible. Basically as hearsay and stipulation of counsel.

THE COURT: The objection is overruled. It will be received.

Exhibit 49, the training bulletin on control holds dated July 31, 1972, was objected to as irrelevant.

I believe it is relevant and admissible, even though superseded by Exhibit 47, the revised edition, because it shows how the hold has been used to start with.

MR. UNGER: Very well, your honor.

The Court has undergone a very, very careful reading of the briefs filed. I would appreciate very much if counsel, in addressing the Court in argument, would be cognizant of that fact, and perhaps in your comments that you either emphasize or address issues not covered in your briefs.

Counsel for the plaintiff is invited to initiate the arguments.

MR. MITCHELL: Thank you, your Honor.

Is it the Court's desire at this point to rule with respect to the questions of judicial notice? I have no interest in adding anything with respect to the briefs on the question of judicial notice of the various things that have been offered. I don't know if counsel would like to. Perhaps we should dispose of that preliminary matter first, and then it might even shorten the argument time further.

THE COURT: Counsel, would you like to respond?

MR. UNGER: I think that we detailed it in our brief. We don't believe that the matters objected to are properly before the Court as judicial notice. It has been detailed, including the legislative history. I can't really say anything more than that.

THE COURT: I would like to tell counsel it is not necessary to repeat. If you want to emphasize certain points you may do so, or if there might be new matter, then I invite you to make your comments accordingly.

MR. UNGER: We have given the Court 15 pages on it and we won't have anything more.

MR. MITCHELL: Is it the Court's intention to rule on the judicial notice questions at this point?

THE COURT: Why don't you go on to the next issue.

MR. MITCHELL: First I would like to thank the Court of behalf of myself, and I am sure Mr. Unger, for his cooperation in bringing the case to this conclusion. You allowed us to do it at our pace, and it is very hard to find that type of cooperation in the district court, and we appreciate it.

The standing issue is addressed at the outset of the opening brief. There is one additional matter that has not come before the Court. It is not argument of counsel; it is evidence.

As I indicated in the brief, I expect this case will go back once again to the U.S. Supreme Court and standing will be an issue there. Mr. Lyons filed his opposition in the Supreme Court in forma pauperis. However, the record must reflect that the costs of this lawsuit, the depositions, the expert fees and all the rest, are being borne by the Southern California ACLU, in its entirety. So the fact that Mr. Lyons is without funds to bear the cost of the lawsuit doesn't mean that it is not going to be prosecuted with vigor. I am going to go to the two tests that I talked about in the brief and try to add to what has been said there.

The Inglis test and the Sierra Club test are the tests that have to be applied by the Court here today as to whether or not a preliminary injunction will issue.

The Inglis test says that it is a combination of probable success, possibility of irreparable injury, or if serious questions are raised and the balance of hardships tips in Lyons' favor, the injunction should issue.

We think it should with respect to three different issues, the first being the Fourth Amendment claim that these seizures by stranglehold are unreasonable, purely under the Fourth Amendment.

Not cited in the briefs is Terry v. Ohio, which I think is, for the record, 88 Supreme Court —

THE COURT: That is the temporary detention case?

MR. MITCHELL: Where the Court said that a frisk, a simple frisk, is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and is not to be undertaken lightly.

THE COURT: Are you placing your emphasis on the Fourth Amendment?

MR. MITCHELL: In this part of the argument, yes, your Honor. And then we are going to argue the due process clause.

Terry also quotes the Union Pacific Railroad v. Botsford, 141 U.S. 250, talking about how no right is held more sacred than that to an individual's — sanctity of an individual's body.

Now, strangleholds are unreasonable if no deadly force is threatened, because of the whole, horrible panoply of things that happen to people when they get strangled. It is illustrated in what happened to Adolph Lyons when he was strangled, and you can list them. All the experts agree that this is what happens when bar arm control hits you: Pain, terror, seek to flee, flight, convulsions, at a point urination, defecation, unconsciousness and death.

Ten deaths in this city.

I would like to point out, to the best I have been able to determine in the last five years the 50 states of the United States have executed, pursuant to a jury verdict and a judge's decree, three people. And ten have died by stranglehold in this city without ever having a jury trial, and pursuant to no law. Two of those people who were executed in the United States committed, if you like, state-agreed-upon suicide, because they refuse to challenge their convictions.

I submit that this shocks the conscience, is outrageous and brutal, when no deadly force is threatened.

I do want to go to the death penalty cases. Those weren't alluded to in the brief, your Honor. The two cases I want to talk about are the Georgia cases.

Back in 1976 the U.S. Supreme Court had an opportunity to determine whether or not — I think it was '76 — whether or not the Georgia death penalty law was constitutional, or not. That death penalty law said it was a capital offense punishable by death if the murder was committed, quote, "outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim."

At that time when the U.S. Supreme Court first looked at Georgia's death penalty statute, it turned out that there had been two people sentenced to death with respect to that statute, and only two, and they happened to be strangulation deaths. And the case talks about, the one that finally overturned the death penalty law, that's Godfrey v. Georgia, May 19, 1980, 100 Supreme Court 1759 — it involved a case, I believe, where there was a shotgun death of a wife and mother-in-law in front of a man's eleven-year-old daughter. Nonetheless, the death penalty statute when it was first approved by the Supreme Court had only been applied where there was a strangulation, a slow tortured death.

The Court should also note that from the death penalty California and Georgia, and I am certain many other states, have automatic appeals to the state supreme courts.

You can't, according to the Supreme Court, kill someone legally, after a jury trial for armed robbery. That's Gregg v. Georgia.

You can't impose the death penalty on someone for rape of an adult female. That's Coker v. Georgia, 97 Supreme Court.

So I don't see how in the world you can impose death on the people on the streets of L.A. by the stranglehold.

THE COURT: How about a life sentence for the theft of $23 worth of merchandise on three separate occasions deemed a felony in that particular state?

MR. MITCHELL: It is a very unusual state, your Honor.

THE COURT: I heard that that state corrected the particular sentence.

MR. MITCHELL: I am delighted.

Aside from the Fourth Amendment problem you have due process problems in two areas, substantively and procedurally.

The substantive due process — both arose under the Fourteenth Amendment — we are not claiming under the Fifth Amendment due process clause at all — the substantive due process problem arises when a state infringes upon the fundamental right of the citizens. The fundamental constitutional right to be free from unreasonable seizure is unquestionably fundamental. Terry makes that quite clear.

We showed that with respect to Adolph Lyons. And to the extent that we were able to, because of the statistics problem, the discovery we were able to find, we showed nine deaths, ten deaths, so there can be no doubt, given all

the testimony, that the fundamental right has been and is being infringed.

I don't need to say anything more. My burden is now met. Now the city must come back and meet its burden, and its burden is, first of all, to show there is a compelling state interest in using strangleholds.

What has it shown?

Your Honor, I suggest there is no competent evidence before this Court that there is a compelling state interest in applying strangleholds.

Even if there were, the burden is on the city to show that it is the least intrusive alternative that they have got. And they failed to do that.

What about all these other police forces that don't have to do strangleholds at all? What about the fine Los Angeles County Sheriff's Department that doesn't use the bar arm? Or the California Highway Patrol? What about using CS gas and Tasers? Where is the evidence that kicks or batons cause injury? There is none there.

They completely failed in their burden to show that strangulation is the least intrusive alternative by not presenting to this Court a single competent statistic as to injuries.

And, finally, under the substantive due process argument, the burden, even if it is the least intrusive, is on the city to show that there are standards and guidelines which keep the official from exercising unfettered discretion as to when the constitutional right will be infringed.

And you have got Dionne's testimony who says that maybe he used it twice in four and a half years. You have Chief Ritter's testimony who said some of the officers hardly ever need to use this.

The proof is, in fact, that you don't need it, so why do you even need written standards? For those who do use it, there is nothing.

The parade permit cases, Shuttleworth v. Birmingham, 89 Supreme Court 935, are directly in point, where a mayor had unfettered discretion to deny a parade permit.

I am going to reserve just a moment to rebut or respond, if I may, to counsel, because I think he is going to say the standard is different, it is arbitrary and capricious. I would like to speak to that for just a moment.

Procedural due process is something not addressed in the briefs, either, your Honor, and it is an important part of the case.

It is quite clear that to suggest that an arrestee receive notice and hearing before he is strangled, that's absurd and we don't pretend that is what should happen. But a citizen who is confronted with a police officer, however, who is going to strangle him, unlike at the Academy, or in judo, he doesn't know that the man strangling is not trying to kill him, he doesn't know that he is in a place where he could die without predictability in two or three seconds, he doesn't know how to submit, and he doesn't know that he may be totally unable to give a hand clap as in judo, and that there is a referee there to help him submit. There is an element of due process, procedural, that is lacking when a police officer does confront a citizen in the streets if there is an opportunity, at least, to do so, which is, "All right, buddy, I am just about to do something to you that is terribly, terribly dangerous. We have killed nine people in the last five years doing it, you may not be able to speak, you may urinate, we may kill you, if you don't submit." That never occurs, that is not part of the procedure. And to that extent due process is denied.

THE COURT: What are you suggesting, expansion of Miranda?

MR. MITCHELL: It sounds like a Miranda type of warning. And without tongue in cheek I think that's a terribly important thing.

Now, query whether there is going to be irreparable injury.

Judge, I think the briefs are quite clear that if you don't give us this injunction you are going to have a continued two deaths a year just like clockwork. There is nothing more irreparable than a premature and unintended death, and I am not going to dwell on that. I think irreparable injury is totally shown.

That means under the Inglis test, the first prong of it, we win, we get an injunction.

There is a second prong of the Inglis test. Whether there are serious questions raised.

There can be no doubt that there are serious questions. They were cited in the brief.

Can you strangle a huge majority of black males in the City of L.A., randomly killing them, for traffic violations, or are they per se unreasonable? And I have gone over the serious questions.

The balance of hardships tips sharply in all of the citizens' favor. Great police departments don't need to use these holds and they are not using them today.

Alternatives exist. This afternoon the roll call announcement could start, if you give me an injunction. They could say, "Don't use this hold unless deadly force is threatened." And it would be done.

In the Sierra Club test, the first two parts are the same. The only difference is whether the public interest, the third part, favors granting the injunction. And I think the public

interest in the citizen's constitutional freedom from unreasonable seizure, and in life itself, is perfectly sufficient to show that we don't need to do this to people, and the public interest is served if we don't.

I have offered some exhibits, I have given them to the clerk, and I am not going to pursue them. They are quite clearly hearsay. The exhibits 79 and 80 are withdrawn.

There is no evidence before the Court that if you give me this injunction, Adolph Lyons the injunction, injuries will increase. No competent evidence whatsoever. The city is not going to be harmed. As a matter of fact, there is good reason to believe that violence begets violence, and if we gentle things down a little bit we will have a lot fewer people killed.

The conclusion is, under the Sierra Club test the injunction must issue.

One last part on our success on the merits is very short, and that has to do with our equal protection argument, your Honor.

No state shall deny any person the equal protection of the laws.

They admit black males are nine percent of the population. Eighty percent of the strangulation deaths are black males.

They say this is statistically insignificant, without offering any competent evidence to the effect, from any expert, that it is statistically insignificant.

But I am going to suggest to you, judge, even if it were, that you can back away from it in a very interesting way in an analysis. We have Adolph Lyons' testimony that it was used discriminatorily against him as a black, we have Farrell's testimony — we have Councilman Farrell's testimony, we have Reverend Meriwether's testimony, in Ex-

hibit 60. If you assume any population of this city whatsoever, 2,000,000, 200,000, or a hundred thousand, given the statistics we have got, eight black males, two white males, and you assume that these deaths are random, which the city wants us to believe — there is nothing we can do about them, we can't stop them, they are random — then you have to conclude that strangleholds are applied 80 percent on black males in this city, and 20 percent on white males. You take the percentage that they make up of the population and judge the mathematics — simple to do — a black male walking the streets of L.A. is 17 times more likely to be strangled by an L.A. police officer than a white male.

The city has never explained this, and I don't think they will now; and I hope we get the injunction.

THE COURT: Thank you very much.

Counsel, please.

MR. UNGER: Your Honor, I am going to be a long time. It is up to you if you want to start.

THE COURT: As long as you are not going to repeat that which is contained in the briefs.

MR. UNGER: I will not.

THE COURT: Proceed.

MR. UNGER: I believe it is necessary at this time, particularly in regards that this is the first opportunity to reply to the reply brief by the plaintiff in this case, to go over some various parts of it.

I think that a great deal of the evidence or a great deal of the statements made in the reply brief are consistent with what has occurred throughout this case, and that has been confusion of the issues, distortion of testimony, or not providing complete testimony as to witnesses. That is one of the dangers of the depositions. The assorted paraphrasing

in plaintiff's application for preliminary injunction, when citing Professor Mikell in Mattis v. Schnarr is a gross example of that.

Going to the reply brief. The plaintiff's reference to Blake v. The City of Los Angeles, is not only irrelevant, but misleading. Four pages are spent on it because of that. I think I should spend some time on it.

One, Blake — a case I am familiar with — involved a Title 7 lawsuit where the plaintiff had established a prima facie showing of disproportionate employment impact. The plaintiff's assertion that Blake stands for the proposition that the city in the past had failed to distinguish the firing of a weapon, use of a baton, sap or bar arm strangulation as different degrees of force misstates Blake and the facts. Footnote 11 in Blake discussed a study combining various degrees of "strong force" in order to validate a height requirement. It had nothing to do with the degrees of force, when these degrees of force are permitted, or in their order related to the escalation/deescalation policy, which is noted in our opposition papers. Three: The contentions concerning Blake on Pages 22-25 of the plaintiff's reply brief are confusing and misleading. But there seem to be two goals in mind. One is to imply because the City of Los Angeles lost in Blake and that studies were insufficient in that case, therefore, ergo they must be the same in the instant case. And secondly, there appears to be an attempt to analogize a Title 7 lawsuit with a Section 1983 lawsuit. That is clearly erroneous. In a Title 7 lawsuit once the plaintiff demonstrates that there is a disproportionate impact on a particular group, the burden shifts to the employer to show that the test or requirement has a manifest relationship.

That is not the case here.

THE COURT: Is that your position, that that's what counsel was trying to do?

MR. UNGER: That seemed to be one of the things I was getting.

THE COURT: I didn't receive it that way.

MR. UNGER: Then I apologize to counsel.

THE COURT: Proceed.

MR. UNGER: There is no shifting of burden analogy in this type of case similar to that. The cases cited by the plaintiff for the proposition that invidious discriminatory motive is unnecessary for a Fourteenth equal protection argument, which is in our response brief and opposition papers, are not applicable. Roberts v. Williams, 456 Fed.2d 819, a Fifth Circuit case cited by the plaintiff, does not concern the equal protection clause of the Fourteenth Amendment. It concerns the Eighth Amendment's prohibition against cruel and unusual punishment. In Allison v. Wilson, 434 Fed.2d 646, cited by plaintiff, the Court was concerned with the standard as to negligence. It stated, "Specific intent to violate constitutional rights is not a necessary element under Section 1983."

It wasn't concerned with the actual constitutional violation itself.

The Allison case was not considering the equal protection clause of the Fourteenth Amendment, but was considering the state of mind in regards to negligence.

Lastly, Phiffer v. Proud Parrot, a recent case that was attached, is a 42 U.S.C., Section 1982 case, and does not involve at all the issues before the Court. In that case the Court — we have an exact standard. It is clear under the Fourteenth Amendment, and the cases I have cited, that when dealing with the equal protection clause you must show disproportionate impact — strike that — you must

show invidious intent. And none has been shown here in this case.

The statistics the plaintiff asserts as indicative of invidious intent, I think without being a statistician, are clearly suspect.

If you use the argument that the plaintiff is using, then I as a Caucasian person could use the Fourteenth Amendment to attack the number of deaths that have occurred, because there were no Chicanos mentioned in those ten deaths. Therefore, the input is 100 percent differential, because of the ten deaths only two were involving Caucasians and no Chicanos, and therefore there is a disproportionate impact. It is obviously not probative. Without a showing of intent the equal protection clause does not apply.

We have conceded that there is a cause of action other than the standing issue, but it is clearly substantive due process. The arguments here as to procedural due process I cannot talk to. They make absolutely no sense to me at all.

The plaintiff — I want to go through some of these statements made in the depositions, but I think it is important that the Court understand what was asserted in the reply brief is taken out of context in the depositions. For example, in regards to Dr. Dodge the plaintiff states on Page 3 of his brief that Dr. Dodge stated, "Even defendants" expert neurosurgeon agrees that 'pressure should not be applied to the frontal area of the throat unless death is the desired result.' " And then the plaintiff points the Court to page 3 of Dr. Dodge's deposition.

That's nowhere on page 3 of Dr Dodge's deposition, nor any other place in the deposition.

What is stated on Page 44 of Dr. Dodge's deposition, the following question was asked by Mr. Mitchell:

"Question: One of the city's experts in this case, a martial arts expert, was asked the following question: 'Is it a fair statement to say that pressure should not be applied to the frontal part of the throat unless death is the desired result?' His response to that was 'Yes'. Do you agree or disagree with him?"

And then Dr. Dodge stated: "I think so, basically, but it depends on the amount of force."

That is a serious and important qualification of what he is stating.

Later he states: "Do you agree with him depending upon the amount that is applied?

"Answer: Yes."

On Page 45 Dr. Dodge was asked the following question:

"Could you specify the amount of force which applied to the frontal part of the neck with the forearm is unlikely to result in serious injury or death?

"Answer: No, because it depends on the size and the weight and the general anatomical configuration of the neck."

The importance of this is that the quote that is asserted to have occurred by Dr. Dodge did not occur. And this is one thing that has consistently occurred in the depositions and the use by the plaintiff of the depositions.

On Page 14A of the plaintiff's reply brief he asserts that Dr. Dodge contends that the bar arm control hold is a life-threatening procedural maneuver which to him means deadly force. Once again, this is a total misrepresentation of the testimony of Dr. Dodge.

When Dr. Dodge was asked what his definition of deadly force was, he stated, "My interpretation medically is that is a life-threatening act or a life-threatening procedure or maneuver."

After further cross-examination by the plaintiff regarding force Dr. Dodge was asked the following question: "So you don't require death to result?"

Dr. Dodge answered, "I think it has to have the possibility and a good statistical possibility of causing death, yes."

After further questions he asked whether a procedure that resulted in death two percent of the time would be deadly force, and he said, "No." Which ironically in this case here, using the statistics and experience of all of the experts on both sides, the plaintiff's own experts and our own experts, we are dealing with much less than one percent, much less two percent.

On Pages 48 and 49 of Dr. Dodge's deposition he was asked the following question: "Do you consider the bar arm control hold to be a life-threatening procedure or maneuver?" His answer was, "Yes," but under certain circumstances. Obviously referring to the amount of pressure.

The same thing occurs —

THE COURT: What is he really saying there? Is he saying that there is improper training, or that there should be greater training or expertise before those holds should be applied?

MR. UNGER: Dr. Dodge?

THE COURT: Is that what he is saying?

MR. UNGER: I don't think Dr. Dodge is saying that. I think Dr. Dodge is saying that from his review of the autopsy reports, his review of the demonstration, that if a bar arm hold is used, if greater pressure is applied, or too great a pressure is applied to the frontal part of the neck, it will cause injury to the larynx.

THE COURT: Is that a question of training? Because they are not talking only of the severity of the hold, but the duration, and matters like that.

MR. UNGER: I think as far as the bar arm control hold — I think duration applies more to the carotid artery control hold, in the sense of unconsciousness. In the bar arm control hold, the major danger, as we pointed out, would not be so much duration, but the amount of pressure, the amount of pressure to the frontal part of the neck, for example. I was going to get into that later.

As we discussed in our brief, the position that the army takes, or the San Francisco sheriff apparently took, which came out in that deposition, where they use a striking motion, if I may show it to the court (demonstrating), where when they are executing the bar arm control hold —

THE COURT: Are you going to assume the risk?

MR. UNGER: I have already paid him.

(Continuing) — they would use a striking position to the neck (demonstrating), and then bring him back. Where the police department rejected that. They strike here (indicating) and then bring it up. That has to do with the type of pressure that is involved.

That is what Dodge is saying, that if you use excessive pressure, then you are going to be involved with dangers to the front part of the neck. And I think that's all he is saying.

He is obviously not saying, as alleged, that the bar arm control hold is deadly force. And that is clearly not what he said in the deposition and not in his declaration.

I don't need to spend the rest of the time in regards to the rest of the depositions that occurred, but it is clear that if you look through the depositions, and look through them carefully, that what is occurring is piecemeal statements

taken out. You go to statements taken out of Page 4, 12, 19 and 22, to come to an opinion.

That is not what is occurring in the case.

The plaintiff in his reply brief cites the city studies on the control holds, and once again there is a picking and choosing of where he wants to go with the control holds. He cites the 1975 study where it is reported that out of 144 injuries 52 were attributed to the bar arm control hold. Then he asserts that nowhere is any stranglehold death mentioned. This could be because the study of 1975 was concerned with the previous year of '74, and even to both of our knowledge no deaths occurred in 1974.

He does not refer the Court any further in the report and show that of the 144 complaints, 137 were found to be unfounded; and that the baton — in that study 75 percent more injuries occurred from the baton than from the bar arm control.

The plaintiff also fails to refer the Court to the following statistics, which indicate that in 1974, 1,253 officers were assaulted, and of those incidents 804 encounters involved bodily force by suspects.

As noted in the defendants' opposition, in the 1978 Police Commission Hearing Report, which was probably at that time the most exhaustive study that had been done in this area — we did not introduce that report to show the truth of the matter therein, it is hearsay — the report was introduced to show to the Court that the process of the decision-making on these holds is not arbitrary, is not capricious, but they have been evaluated; that the police commission, the city council, and everyone else, has been concerned with these holds and have continually evaluated them, and therefore it does not need the Court's intervention in this. But, once again, the plaintiff in this case picks and chooses

where he wants to go in this report. He says — he refers the Court to various parts of the report that are negative, but doesn't show the positive. Therefore I think now the entire report is admissible and all of the parts of the report are admissible.

A very interesting part of that report is that even Dr. Griswold, the leading witness for the plaintiff in this case, his opinions were considered, were evaluated, as well as other people, and yet the police commission came to the same conclusions with the one modification, as to the bar arm control hold, that they must be maintained if there is to be safety to the population.

The autopsy reports. The plaintiff continually emphasizes he has proven ten deaths have occurred by the application of these control holds.

Well, the Court has ruled on Turk as not being relevant, and now we are down to nine.

As noted in defendants' opposition, two of the deaths, Larry Morris and Frank Fairbanks, did not involve successful applications of either the bar arm control hold or the carotid artery control hold. And the autopsy report so indicated, that the deaths were not supportive of the type of injuries that would have occurred from those control holds.

The death of Edward Daly was from aspiration of vomitus and although the autopsy report indicated neck restraint procedure for abnormal behavior, there was no significant injury to the neck.

The remaining report of deaths, at the most we have two, perhaps four or five reports of deaths that could be attributed to these holds. We have shown that through the testimony and deposition of Dr. Hanks, as well as through the statements of Dr. Dodge.

The plaintiff continuously stresses the fact that the victim in this case is merely being detained for a traffic infraction or trivial misdemeanor. Although the Court has admitted the incident with regards to Mr. Lyons, we are in a policy case. I don't know the facts of Mr. Lyons in the context of this case, but we are dealing with a policy of the City of Los Angeles. With the exception of Lyons' own deposition, a person obviously involved in order to obtain damages, there is absolutely no proof to show that these holds are used to detain traffic infraction violators or trivial misdemeanants. These holds are used to overcome resistance, overcome force, from either a felon, a misdemeanant, or a traffic violator has offered resistance to an officer.

With the exception of one of the robbery-homicide reports, which were the plaintiff's exhibits, every one of the occasions, if you look at the facts of those reports, the officer was attempting to overcome severe resistance and was apparently in danger of harm. The plaintiff appears to be arguing that if an officer is arresting someone or properly has detained someone, and that person resists the officer, the officer should let him get away even though it is within the officer's ability to stop him.

The law in California and the necessity for effective law enforcement would never allow such a ridiculous conclusion.

The plaintiff asserts on Page 5 of his reply brief, "Absent any credible evidence that alternative procedures would result in increased injuries or deaths to either officers or suspects, the public interest must be served by adjusting use of strangleholds to those instances so serious the strangulation would not be an unreasonable seizure." The defendants' expert witnesses, as well as his own witnesses on cross-examination during the depositions, and the reports noted in the defendants' opposition, have consistently

stressed that alternatives would result in more serious injuries; the baton, the karate kicks, and obviously the gun, would result in more onerous results to the population, purported population that the plaintiff is stating he represents. The plaintiff's suggestion on Page 28 of his reply brief that the Court ought to grant the preliminary injunction so that the defendant could gather reliable statistics — assuming that we don't have them already — that citizens will suffer more numerous or significant intrusions upon their constitutional rights with alternative methods is not only ludicrous, but socially irresponsible. What the plaintiff is asking the Court to do is to allow a bloodpath in the population he purportedly represents, so we could provide him with good statistics. His analogy is that because doctors have testified and martial arts experts have testified that the baton and karate kicks will cause more injuries, that that is not reliable. As an example, if we had someone here who said, "Well, I know strychnine is going to poison most of the people, we should not allow it to be dispensed in our cafeterias." "Well, then we don't have any stats on it. Why don't we pass it out and make sure that we can prove it?" That is not socially responsible, that is what the city council, police commission, and police department have consistently rejected in this case. Part of the time it is going to result in more serious injuries.

Common sense will tell you, and if the Court so desires we will bring a team here to show you what we are talking about when we are talking about karate kicks and the baton as a substitute for the bar arm control hold or the carotid artery control hold. The Court will see immediately that that will result in much more injuries to the population.

The plaintiff asserts on Page 3 of his reply brief that these holds result in, quote, "Involuntary struggle to flee for one's life and culminating in spastic convulsions, urination, de-

fecation, and, possibly, death." End of quote. With the exception of one quote from Dr, Kowai, and Lyons' own assertion, there has been no proof that urination and defecation occur. Dr. Kowai stated that he saw this occur on one occasion, from the thousands of times he is familiar with these holds, but he has never seen it occur any other time.

It also ignores his testimony, and all testimony of witnesses, that the reactions to unconsciousness rarely ever occurs because, one, suspects first give up; two, if a petit mal seizure does occur the suspect revives within ten to fifteen seconds.

It also ignores the testimony of all witnesses that the persons who do become unconscious, and demonstrate symptoms similar to the petit mal convulsion, show no residual aftereffects.

The plaintiff asserts in his conclusion, that defendants have not offered any evidence to rebut plaintiff's sworn testimony that he was almost strangled to death when he offered no resistance at all.

Once again, the defendants point out to the Court that the defendants are concerned with relevant testimony; although I know the Court has ruled otherwise. What occurred to Lyons is involved with individual damages. What concerns the Court now for the injunctive and declaratory relief, concerns the overall policy of the police department. This is a policy suit.

Now, the law. As stated in his reply brief, the plaintiff states, "It is incredible and outrageous to find the government claiming a right to inflict death on a citizen who, rather than resisting detention for a traffic offense, is desperately struggling to save his own life from strangulation." A little bit of what has been argued here previously. This is sheer

nonsense. The city has never claimed such a right. There has been no evidence to show that is the position of the city. All evidence shows differently. The right that the city claims is that officers must be allowed to overcome resistance, when they rightfully detained someone, and they must be able to protect themselves. At the point where these holds are used, that is what is the policy of the City of Los Angeles. For example, if you follow a factual scenario of what might occur, let us say, using the least possible serious type of crime of all, an ordinance, jaywalking. A person is jaywalking and the officer wants to issue a citation, the person continues to walk away, and the officer says, "Come back, you are going to be given a citation." He continues to walk. The officer grabs him, as stated in the policy, by his arm. And then the person swings and strikes the officer in the face — what he is asserting, what he seemed to be asserting, because that is not deadly force and there was nothing else available, the officer should say, "Well, that's it, sorry, that's the end of the day, come back another day. Why don't you give me your identification."

That's exactly the scenario. That scenario applies to every possible crime that the plaintiff is talking about.

These holds, pursuant to policy, are to overcome resistance; not as alleged, to arrest misdemeanants or traffic violators.

May I have just a moment, please?

In conclusion, your Honor, the plaintiff in this case is asking this Court to substitute his judgment for that of the City of Los Angeles, regarding their policy as to the use of these control holds. I have given the Court almost 120 pages of written argument on what is the law, and I think what I have shown the Court is correct. The evidence in this case indicates the City of Los Angeles has continuously

reviewed, considered, modified, its policy regarding the control holds at issue, and has concluded that at the present time with the present knowledge of science and martial arts that these holds are necessary in limited circumstances in order to overcome resistance, and to afford an officer some protection. They are also necessary to overcome resistance and afford an officer self-protection from a resisting and hostile suspect.

The plaintiff's evidence in this case is weak and inconclusive. Details of that evidence have been presented in our opposition, but in short — I just want to repeat it very quickly — the plaintiff's medical experts have little experience with these holds, and in fact one of the experts has never seen a Los Angeles police officer apply it. The other expert hasn't seen it applied since 1975. Dr. Fine saw a hold applied by the San Francisco Sheriff's Department, which has been rejected by the police department here in Los Angeles as too dangerous to suspects. He has only seen the bar arm hold applied; he has never seen the carotid artery control hold applied. Dr. Fine has seen one injury out of seven occasions, and obviously the circumstances that exist at that hospital are different then they are for an officer on the street.

Dr. Fine is not a neurologist, yet he claims — unsupported by any background — that the major danger from these holds is stimulation of the vagus nerve.

Dr. Dodge, if the Court read his bibliography, is obviously one of the leading neurologists in the country, refutes this and says it does not occur.

Dr. Griswold indicates that these control holds are possibly dangerous. Yet out of the 30 times he has seen this he has never seen an injury, never seen anything of significance occur.

Bruce Tegner, the one and only martial arts expert used by the plaintiff, doesn't even attack the carotid artery control hold. He finds that humane and safe. However, he feels there is a substantial risk from the bar arm control hold. However, he has never seen any death or serious injury from the bar arm control hold. His definition of deadly force goes anywhere from bruises to death, which is obviously ludicrous. He presents alternatives that even to an amateur are more onerous and dangerous —

THE COURT: Did the Court rule that to be hearsay?

MR. UNGER: I don't think it was objected to, your Honor.

THE COURT: Tegner's article?

MR. UNGER: I am sorry. I introduced a book of Tegner's, which was part of our deposition, in my cross-examination of him during deposition, and that's where this information came in.

There was another book introduced for other reasons.

The autopsy reports have been extensively gone into and they don't need repetition here.

The city recognizes and has consistently recognized that there are dangers involved in these holds. We don't claim, as indicated in our opposition, that they are fail-safe. We recognize injuries will occur — that they will occur, but the alternatives presently, based on the knowledge that is available to the city, will result in more onerous injuries. What the plaintiff is asking this Court to do is to substitute its judgment, based on very weak and inconclusive testimony as to what has been developed, not only by the City of Los Angeles, but most police departments throughout this state.

The plaintiff's emotional but rather confusing appeal to this Court in his conclusion of his reply brief states, quote, "Any man's death diminishes me." End of quote.

That is exactly one of the points of this lawsuit. Common sense and medical testimony have indicated that any time there is a confrontation between human beings injury or death may occur. There is no way out of it. We are not talking about playing checkers or chess, we are talking about two people involved in a serious confrontation. And that is the exact concern of the City of Los Angeles.

The facts indicate that without these holds death will occur more times and mean more injuries to the city.

To grant a preliminary injunction would be contrary to law, and contrary to the social interest of this community. To grant this injunction would result in more injuries to the population, more deaths to the population, more injuries to the officers, and even possibly more deaths to officers. Because any time a higher degree of force is used it is likely the person is going to combat that with a higher degree of force.

The City of Los Angeles respectfully requests this Court not to second-guess the decisions and policy of the city regarding these holds, based on very weak and inconclusive testimony, and create more hostility and tensions in the community than already exist.

It is much easier, your Honor, for a police officer to combat resistance with a baton. He doesn't get tangled up, his gun is not in danger of being taken by somebody. But what is occurring now, or what is recommended, is exactly what, if the Court grants an injunction on these holds, will occur.

One point, and I think it has been explained. You cannot enjoin one without the other. It is clear from going through the depositions that the plaintiff has, although not expressly done it, given up on the carotid artery control hold and is

going basically with the bar arm control hold. You can't enjoin one without the other for a number of reasons.

We have shown that the bar arm control hold can be used in certain circumstances where the carotid cannot, and it would be ludicrous for this Court to attempt to enforce an injunction against one and not the other, because everyone will be coming in and saying, "It was a bar arm," "It was a carotid," "It was a modified carotid." It is totally ludicrous.

The evidence in this case, the history of these holds, not only throughout the City of Los Angeles, but elsewhere, indicates that these holds under the circumstances that we have now are the best means in order to achieve a goal, and that goal being to apprehend and prevent persons from resisting arrest.

Now, even if the plaintiff had a strong case, which the defendants do not believe they have, the plaintiff's evidence, at best, indicates a difference of opinion between medical and martial arts experts.

In the context of a 1983 lawsuit that involves the policy of a municipality, the Court should refuse to resolve these differences. The deference, comity, and general doctrine of separation of powers, should mandate that judicial interference, when and if it occurs, should only occur when there is a clear and erroneous decision made. That is not the case here.

There is a difference of opinion, obviously. I am not impugning the integrity of these witnesses. There is a difference of opinion. They City of Los Angeles has come to one view. Their view is not arbitrary and capricious. We have shown the Court three studies that have been involved in that decision. Their view should not shock the conscience of the Court. Because to shock the conscience of the Court

under the Rochen test, the Court must look at the alternatives that are available. And while the plaintiff continously points out key words, that is, defecation, urination, and all of these things, if you take these words away, you take away the confusing arguments and sheer illogic, it comes down to one thing, there is a difference of opinion, and the plaintiff has in no way met the burden to show that his witnesses have any more expertise than the city's witnesses that should persuade the Court to enjoin the City of Los Angeles to continue in their policy.

One last point. The City of Los Angeles has not remained static. As we indicated in the brief and the declaration of Sergeant Pallagrino, we are trying new things. We tried CS now as a possible substitution. It is 70 percent effective. It can't be used in all cases. We tried the Taser. It is 80 percent effective and can't be used in all cases, and also can result in injuries. We are not remaining static. In fact, when I went to the police commission this week to discuss this case the commission told Chief Gates that, "Because we are not agreeing to settlement of this lawsuit, as proposed, we want you to keep trying to improve methods."

For the Court to interfere in that decision and the procedure that has been set up in the City of Los Angeles would have a tragic result, because what would basically occur, the city would say, "Let the Court make the decision. We will no longer be involved in it."

Thank you for your time.

THE COURT: Thank you very much. I think the Court has heard enough.

The Court is asked to decide the propriety of the continued use of the carotid and bar arm trachea holds by the Los Angeles Police Department to subdue suspected law violators. I guess, very simply stated, plaintiff is asking the

Court for a finding that those two holds involve the application of deadly force and thus should be enjoined in instances where the particular officer is confronted by a force which threatens less than death or serious bodily harm.

The city is essentially responding by contending that the holds are not deadly, and on the rare occasions where death results these deaths were attributable to pre-existing metabolic conditions of the suspects, or that the particular suspect's use of drugs contributed to the increased risk of cardiac arrest, which was then the cause of such deaths.

Initially plaintiff was seeking a ruling that the stranglehold be deemed a deadly force on judicial notice; that is, that such holds are deadly forces per se. The Court rejects that particular request.

The Court finds from the declarations and the depositions of experts received in evidence that the two types of holds may not necessarily be equated with death or serious bodily harm if properly applied under certain situations or conditions.

As we reject the request of plaintiff for this Court to take judicial notice, the Court then examines the evidence presented, and after a very careful examination of the evidence the Court concludes that the carotid and trachea holds do constitute deadly force as presently applied.

I base this on the following factors:

Number one. Namely, the holds are not properly taught to police officers. The use of holds on persons under the influence of drugs, or having pre-existing medical conditions, may have such a high likelihood of inflicting irreparable injury or death that its continued use under these conditions is unconscionable.

The testimony of several experts in the field of martial arts indicates that whenever the holds in question are applied

there is a natural tendency of victims to react instinctively and upon reflex and that such reactions may be interpreted by the officers as one of resistance or aggression so that greater force may be used, or that the continued use will result in cutting off the flow of blood to the brain. In the bar arm hold, which the evidence has established was more deadly, the flow of oxygen to the lungs may be severely impeded. In either situation the risk of death or serious bodily harm may be reasonably certain, if not inevitable. Especially when applied by untrained personnel.

Based upon these observations, the Court concludes that the continued use of the carotid and the bar arm holds, under circumstances which do not present a threat of death or serious bodily harm, is in violation of the due process clause — substantive due process clause — and is an activity that shocks the conscience of this Court.

In reference to the various factors for a preliminary injunction, the plaintiff has succeeded in establishing and prevailing upon factors of likelihood of success, the irreparable injury aspect, the balancing of hardships, and certainly the public-interest concept. The Court, therefore, orders that the defendants be and are hereby restrained from the use of both the carotid and bar arm holds under circumstances which do not threaten death or serious bodily harm. And that this restraining order shall continue until this Court approves a program presented to it. Such a program shall consist of a detailed training manual in writing, prepared by qualified individuals, in addition to appropriate, practical training sessions to the members of the Los Angeles Police Department.

The defendants are further ordered to establish a requirement that all applications of the use of the holds in question, even under the conditions this Court permits, to wit, the death or serious bodily harm situation, that the use of such

holds be reported in writing within 48 hours to the Department, that is 48 hours after the use of such force, and that the Department shall maintain records of such reports in an orderly fashion; and to allow this Court ready access to such records upon 24 hours notice.

Plaintiff is ordered to provide a revised Proposed Findings of Fact and Conclusions of Law consistent with the comments of the Court, in addition to a proposed form of the injunctive order just issued.

Thank you, very much. The Court is in recess.

(Whereupon at 12:45 p.m. court was recessed.)

* * *

## REPORTER'S CERTIFICATE

United States District Court, Central District of California.

Adolph Lyons, Plaintiff, vs. City of Los Angeles, et al., Defendants. No. CV 77-420-RMT.

I hereby certify that on the date indicated herein I was a duly appointed, qualified and acting official reporter for the United States District Court, Central District of California.

I further certify that I reported the proceedings herein and that the foregoing 59 pages comprise a true and correct transcript of the proceedings had in the above-entitled cause on the date specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

/s/ Samuel Goldstein
SAMUEL GOLDSTEIN
Official Reporter (Ret'd.)

Dated at Los Angeles, California, this 26th day of December, 1980.

**Declaration of Daryl F. Gates, December 23, 1980.**

I, Daryl F. Gates, declare as follows:

I am the Chief of Police for the City of Los Angeles.

Currently, Los Angeles police officers are not authorized to use a baton or karate kicks except when threatened with serious bodily injury, such as an attack by a suspect armed with a dangerous weapon. The use of the baton and karate kicks has been limited because these methods will frequently result in serious injury to the suspect.

I have decided that if the district court's injunction takes effect, I must authorize police officers to use the baton and karate kicks when threatened with any bodily injury, even though the suspect has no weapon. I regret having to take this action, but without the control holds enjoined by the district court there is no less dangerous alternative which will permit an officer to overcome forcible resistance while minimizing the likelihood of the officer sustaining injury.

In addition to expanding the use of the baton and karate kicks, I must immediately seek to retrain over 6,500 police officers in regard to the Department's use of force policy. This is because any confusion on the part of an officer faced with attack in the field concerning authorized methods of self-defense can cause hesitation, which can be fatal. Such retraining would be expensive and would deprive the citizens of the City of necessary police protection by removing officers from the field at a time of dramatically increased crime. In fact, prior to the district court's action I had cancelled all in-service training for January and February, 1981, because crime in the City has reached such proportions that every officer is needed in the field.

I declare under penalty of perjury that the above is true, and that this declaration is signed at Los Angeles, California on December 23, 1980.

/s/ Daryl F. Gates
DARYL F. GATES
Chief of Police

**Declaration of Robert L. Good, December 23, 1980.**

I, ROBERT L. GOOD, declare as follows:

1. I am a sergeant with the Los Angeles Police Department. I have been employed by the Department for approximately 12 years, and have been a sergeant for the last 3 years. I am presently assigned as the assistant officer-in-charge of the physical training-self-defense unit of the Los Angeles Police Department. This unit is responsible to train all officers in the various self-defense and use of force techniques permitted by the Department.

2. It is the policy of the Los Angeles Police Department that an officer will not use any more force than is necessary in order to effectuate control of a suspect and overcome resistance. In order to achieve this goal, the Department has developed an escalation/deescalation use of force policy. This policy is described in the Department training bulletin, Volume X, Issue 10, May 1978, at pages 1-3 (see Attachment No. 1 to this declaration). Each level of force described is geared to the actions of a suspect.

3. From my experience as a police officer, and particularly from my role as an instructor at the police academy, I am familiar with the various levels of force and self-defense methods permitted by the Department. It is my opinion that without the use of the carotid-artery and bar-arm control holds, officers and citizens will suffer increased injuries and deaths. The basis for my opinion follows.

4. With the elimination of the carotid artery and bar-arm control holds, officers will be forced to rely upon the baton and/or karate kicks which can only result in increased injuries to suspects. Up until now, the Department has not authorized officers to use a baton or karate kick unless threatened with serious bodily injury, such as an attack by a suspect wielding a dangerous weapon. With the elimi-

nation of the carotid artery and bar-arm control holds, officers will need to resort to the baton or karate kick in order to achieve control over a weaponless resisting suspect.

5. The baton weighs approximately 15-18 ounces, is 26 inches in length, made of wood, and has a diameter of approximately 1¼ inches with both ends rounded. The Monadnock[1] is 24 inches long, 1¼ inches in diameter, and weighs 27 ounces. It is made of a synthetic fiber that has approximately 2½ times the density of oak wood. It has a maximum striking power approximately 3 to 4½ times that of the conventional baton. Karate kicks consist of three maneuvers — a front kick, side kick, and rear kick. Police officers who execute these kicks would normally have either shoes or boots on.

6. The baton is utilized by either a striking motion (see, for example, figures 18-20 of Attachment No. 2), or a jabbing motion (see figures 23-25 of Attachment No. 2). The Monadnock also uses striking and jabbing motions, but due to its particular structure officers can also utilize spinning, chopping and punching motions. Officers are taught to use full force in applying baton movements or kicks to defend against an attack.

7. The baton cannot be used in all circumstances; for example, it usually cannot be used when an officer is at close quarters and is already tangled up with a resisting suspect. The carotid artery and bar-arm control holds are the only available methods of overcoming resistance and preventing bodily attack when an officer is at close quarters with a suspect. Also, certain assignments do not allow an officer to carry a baton; for example, nonuniformed officers and officers engaged in undercover work. Without the

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[1]The Monadnock PR-24 is a newly developed baton which has a handle at one end.

carotid artery and the bar-arm control holds, or the baton, the next level of force available to an officer is the service revolver.

8. Karate kicks are limited in a similar way as the baton. An officer who is in close quarters and already tangled up with a resisting suspect cannot use a karate kick. Karate kicks also require extensive training and continued practice. Many officers do not achieve sufficient expertise in karate kicks to be able to use them to overcome resistance.

9. Because the batons and kicks require the striking of a hard object with full force against the human body, it is my opinion that major injuries frequently will result. This opinion has been borne out my own observations as a field officer. In the field I have seen or applied the carotid artery and bar-arm control hold at least 100 times. On no occasion have I observed the person receive any injury other than minor bruises or swelling in the neck area. I have only observed the use of the baton and kicks on a few occasions, and injuries have always resulted. The main reason that my field experience with the baton and kicks is limited is that I have always had the carotid artery and bar-arm control holds available in order to overcome resistance and did not need to resort to this higher level of force.

10. I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California on the 23rd day of December, 1980.

/s/ Robert L. Good
ROBERT L. GOOD

Attachment 1 can be found at 36a-40a of the petition for certiorari.

# ATTACHMENT NO. 2

Fig. 18

COUNT NO. 3. Bring the baton back across your body to your left, butt end first, whipping it in a circular motion (clockwise) to snap at assailant's knees or shins. (Figure No. 18).

Fig. 19

COUNT NO. 4. Repeat the sequence of movements used in Count No. 2 (Figure No. 19).

COUNT NO. 5. Repeat the sequence of movements in Count No. 3 (Figure No. 20).

Fig. 20

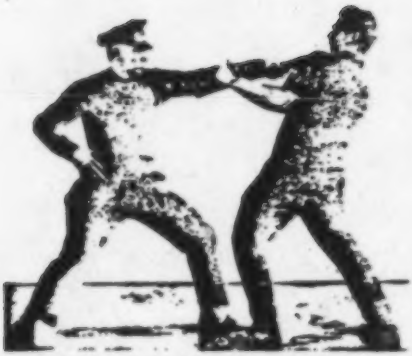

Fig. 23

COUNT NO. 1: Draw the baton butt first from its ring with your left hand and thrust it directly toward the assailant's face (Figure No. 23).

Contact is not necessary. The distraction caused by your thrusting move will be sufficient to momentarily distract him and place him off-balance. At that moment he will be vulnerable to your next move.

COUNT NO. 2: Bring the baton back across your body low to your right side, taking a two-hand grip (Figure No. 24).

Continuing as part of the same motion, bring the baton back and up in a full circular motion over the top, thrusting the butt-end of your baton at assailant's chest.

Fig. 24

Fig. 25

COUNT NO. 3: Still using the two-hand grip and without hesitation, loop back over the top, down, around and underneath in a circular motion, thrusting the butt-end of the baton to the assailant's midsection (Figure No. 25).

Stay flat-footed! Use full, circular motions, but keep the baton close to your body. Do *not* lean out to strike. If you have to move forward or back, do so by shuffling your feet and by keeping your upper body in balance.

THRUSTS are made with a short, punching motion.

# Opposition

Office - Supreme Court, U.S.
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No. 81-1064
IN THE

# Supreme Court of the United States

October Term, 1981

THE CITY OF LOS ANGELES,

*Petitioner,*

*vs.*

ADOLPH LYONS,

*Respondent.*

**Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

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## QUESTIONS PRESENTED

### Context

The official written policy of the Los Angeles Police Department ("LAPD") allows its officers to strangle citizens in a variety of routine circumstances. Since 1975, 14 persons have been strangled to death by officers executing this policy. Eleven (79%) of these persons were black males. Black males comprise only nine percent of the population of Los Angeles. Black males are 20 times more likely than white males to be strangled.

### I

Has the court of appeals decided a federal question in conflict with this Court's decisions in *O'Shea* and *Rizzo*?

(1) Does respondent, a black male who was strangled almost to death at a routine traffic stop, and who justifiably fears that he will be strangled to death upon any contact with the LAPD, have standing to obtain a preliminary injunction limiting strangleholds to situations where death or serious bodily harm is threatened?

(2) Is the "capable of repetition, yet evading review" doctrine applicable to a stranglehold policy which results in only a momentary or fleeting deprivation of constitutional rights?

(3) Do class members have significant claims for equitable relief?

(4) Is the decision in *Lyons II* in accordance with the principles of federalism and equity?

### II

Should the petition be denied as not ripe for review because the issue of standing has been raised at an interlocutory stage prior to class certification?

# TABLE OF CONTENTS


Page

Questions Presented ..... i

Context ..... i

Statement of the Case ..... 1

1. Introduction ..... 1

2. Proceedings ..... 2

3. Facts ..... 5

A. The City's Stranglehold Policy Is Confusing and Ambiguous ..... 5

B. The City Is Grossly Negligent in Utilizing Police Training Bulletins ..... 7

C. The City Provides Grossly Inadequate Stranglehold Training ..... 7

D. Strangulation Is Unconscionable in a Civilized Society ..... 10

E. The City's Reporting Practices Are Inadequate ..... 13

F. Less Intrusive Alternatives Exist ..... 13

Reasons for Denying the Writ ..... 15

I.

The Court of Appeals Has Not Decided a Federal Question in Conflict With Applicable Decisions of This Court ..... 15

(1) An Article III, § 2 Case or Controversy Exists in This Case ..... 15

(2) The "Capable of Repetition, Yet Evading Review" Criteria Confers Standing ..... 20

(3) Class Members Have Standing Because of the Short Duration of Strangulation ..... 24

(4) The Decision in Lyons II Is in Accordance With the Principles of Federalism and Equity ..... 28

II. Page

The Issues Are Not Ripe for Supreme Court Adjudication ..... 29

Conclusion ..... 30

INDEX TO APPENDICES

Appendix A. LAPD Stranglehold Deaths January 1, 1975 Through July 28, 1981 ..... App. p. 1

Appendix B. Second Amended Complaint for Damages; Civil Rights; Preliminary and Permanent Injunction; Declaratory Relief; Demand for Jury Trial ..... 16

Appendix C. Order Staying Plaintiff's Motion for Class Certification and Motion for Summary Judgment ..... 29

Appendix D. Findings of Fact and Conclusions of Law ..... 30

Appendix E. Preliminary Injunction Order ..... 35

## TABLE OF AUTHORITIES


| Cases | Page |
|---|---|
| Allee v. Medrano, 416 U.S. 802, 40 L.Ed.2d 566, 94 S.Ct. 2191 (1974) | 28 |
| American Construction Co. v. Jacksonville T & K.R. Co., 148 U.S. 372, 37 L.Ed. 486, 13 S.Ct. 758 (1892) | 30 |
| Autry v. Mitchell, 420 F.Supp. 967 (E.D.N.C., 1976) | 17 |
| Baker v. Carr, 309 U.S. 186, 7 L.Ed.2d 663, 82 S.Ct. 691 (1962) | 15, 20 |
| Brotherhood of Locomotive Firemen v. Bangor & Aroostook R.R., 389 U.S. 327, 19 LEd.2d 560, 88 S.Ct. 437 (1967) | 30 |
| City of Inglewood v. City of Los Angeles, 451 F.2d 948 (9th Cir., 1971) | 27 |
| City of Newport v. Fact Concerts, Inc., — U.S. —, 69 L.Ed.2d 616, 101 S.Ct. 2748 (1981) | 18 |
| Deposit Guar. Nat. Bank v. Roper, 445 U.S. 326, 63 L.Ed.2d 427, 100 S.Ct. 1166 (1980) reh. den. 446 U.S. 947, 64 L.Ed.2d 804, 100 S.Ct. 2177 | 27 |
| Dunn v. Blumstein, 405 U.S. 330, 31 L.Ed.2d 274, 92 S.Ct. 995 (1972) | 22 |
| Elrod v. Burns, 427 U.S. 347, 49 L.Ed.2d 547, 96 S.Ct. 2673 (1976) | 23 |
| Furman v. Georgia, 408 U.S. 238, 33 L.Ed.2d 346, 92 S.Ct. 2726 (1972) | 20 |
| Gerstein v. Pugh, 420 U.S 103, 43 L.Ed.2d 54, 95 S.Ct. 854 (1975) | 23, 24 |
| Hague v. CIO, 307 U.S. 496, 83 L.Ed. 1423, 59 S.Ct. 954 (1938) | 28 |
| Jones v. Marshall, 528 F.2d 132 (2d Cir., 1975) | 19 |
| Leite v. City of Providence, 463 F.Supp. 585 (D.C. R.I., 1978) | 10, 16 |

Page

Lyons v. City of Los Angeles (Lyons I), 615 F.2d 1243 (9th Cir., 1980), cert den. 449 U.S. 934, 66 L.Ed.2d 158, 101 S.Ct. 333 (1980) ..... 3, 14, 15, 17, 19, 21

Lyons v. City of Los Angeles (Lyons II) 656 F.2d 417 (9th Cir., August 17, 1981) (modified August 20, 1981) (per curiam) mandate stayed pending cert. — U.S. —, 69 L.Ed.2d 1015, 102 S.Ct. 14 (Sept. 29, 1981) ..... i, 4, 5, 6, 19, 28

Mattis v. Schnarr, 547 F.2d 1007 (8th Cir., 1976) vac. sub nom. Ashcroft v. Mathis, 431 U.S. 171, 52 L.Ed.2d 219, 97 S.Ct. 1739 (1977) ..... 17, 18

Monell v. Department of Social Services of the City of New York, 436 U.S. 658, 56 L.Ed.2d 611, 98 S.Ct. 2018 (1978) ..... 28

O'Shea v. Littleton, 414 U.S. 488, 38 L.Ed.2d 674, 94 S.Ct. 669 (1974) ..... i, 15, 16, 17, 20

Owen v. City of Independence, 445 U.S. 622, 63 L.Ed.2d 673, 100 S.Ct. 1398 (1980) ..... 28

Owens v. Haas, 601 F.2d 1242 (2nd Cir. 1979) cert. den. sub nom. County of Nassau v. Owens, 444 U.S. 980, 62 L.Ed.2d 407, 100 S.Ct. 483 (1979) ..... ..... 9, 10, 16

People v. Trevino, 72 Cal.App.3d 686, 140 Cal.Rptr. 243 (1977) ..... 11

Rizzo v. Goode, 423 U.S. 362, 46 L.Ed.2d 561, 96 S.Ct. 598 (1976) ..... i, 4, 15, 16, 17, 18, 19, 28

Roe v. Wade, 410 U.S. 113, 35 L.Ed.2d 147, 93 S.Ct. 705, reh. den. 410 U.S. 959, 35 L.Ed.2d 694, 93 S.Ct. 1409 (1973) ..... 27

Sosna v. Iowa, 419 U.S. 393, 42 L.Ed.2d 532, 95 S.Ct. 553 (1975) ..... 23, 25, 26, 27

Page

Southern Pacific Terminal Company v. Interstate Commerce Commission, 219 U.S. 498, 55 L.Ed. 310, 31 S.Ct. 279 (1911) ..... 21

Swisher v. Brady, 438 U.S. 204, 57 L.Ed.2d 705, 98 S.Ct. 2699 (1978) ..... 24

Weinstein v. Bradford, 423 U.S. 147, 46 L.Ed.2d 350, 96 S.Ct. 347 (1975) ..... 24, 25

Constitution

United States Constitution, Art. III, Sec. 2 ..... 15

United States Constitution, Fourth Amendment ..... 20

United States Constitution, Fourteenth Amendment ..... 18, 21

Statute

United States Code, Title 42, Sec. 1983 .. 2, 18, 19, 28

Textbooks

Coleridge, Samuel Taylor, "The Ancient Mariner" (1798), Part VI, st. 10 ..... 20

Frankel, Some Preliminary Observations Concerning Civil Rule 23 (D.C., 1968) 43 F.R.D. 39, 41-42 .. 27

Moenssens and Ibau, Scientific Evidence in Criminal Cases, 2d Ed. (Foundation Press, 1978), pp. 228, 229 ..... 11

3B Moore's Federal Practice, ¶23.50, pp. 423-424 ... 27

No. 81-1064

IN THE

# Supreme Court of the United States

October Term, 1981

THE CITY OF LOS ANGELES,

*Petitioner,*

*vs.*

ADOLPH LYONS,

*Respondent.*

**Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

Respondent Adolph Lyons opposes the petition of the City of Los Angeles for a writ of certiorari to review the judgments of the United States Court of Appeals for the Ninth Circuit.

## STATEMENT OF THE CASE

### 1. Introduction

For many years, it has been the official written policy of petitioner City that its police officers should employ strangleholds in a variety of routine circumstances. See, *e.g.*, Pet. App. H. Since 1975, 14 persons have been strangled to death by Los Angeles police officers executing this official policy (App. A hereto). Four of those deaths have occurred since the district court's preliminary injunction was

stayed December 24, 1980. Of the 14 killed, 11 (79%) were black males. Black males comprise only nine percent of the population of Los Angeles.

**2. Proceedings**

On October 6, 1976, respondent Adolph Lyons was a 24-year-old black male. At 2:00 a.m. he was stopped by Los Angeles police officers for a traffic infraction because one of his taillights was burned out. Without any provocation, justification or reason to fear for their safety, the police officers applied a departmentally-approved stranglehold around Lyons' neck until he was rendered unconscious. Lyons feared for his life, gasped for air, choked, spit up blood, urinated and defecated on himself (symptoms of impending death) and almost died. He was thereupon issued a traffic citation and released.

On February 7, 1977, Lyons commenced an action against the City of Los Angeles and certain involved police officers under 42 U.S.C. § 1983. He alleged that the City authorized, instructed and encouraged, as official policy, use of strangleholds when no deadly force was threatened. Lyons claimed that, as of 1977, at least two persons had died from the strangleholds. He said the policy threatened himself "and others similarly situated, with deprivation under color of law" of constitutional rights to be secure in their persons against unreasonable seizure and not to be deprived of life, liberty or property without due process of law. He claimed that LAPD policy threatened himself "and others similarly situated" with irreparable injury, to wit, "permanent physical injury and loss of life." He claimed that he "justifiably fears that any contact he has with Los Angeles police officers may result in his being choked or strangled to death without provocation, justification or legal excuse" (CR 1). He becomes "extremely apprehensive and

nervous'' whenever he sees a LAPD police car (Ex. 1:60:23-61:2).

Lyons then sought to enjoin stranglehold use unless the subject ''reasonably appears to be threatening immediate use of deadly force'' (CR 1:15:10-12).

The City successfully moved for judgment on the pleadings as to the injunctive and declaratory aspects of the case. The Ninth Circuit unanimously reversed. *Lyons v. City of Los Angeles (Lyons I)*, 615 F.2d 1243 (9th Cir., 1980), *cert. den.* 101 S.Ct. 333, 66 L.Ed.2d 158, 449 U.S. 934 (October 20, 1980). The mandate of the court of appeals in *Lyons I* was finally spread by the district court August 22, 1980 with the hearing on respondent's motion for preliminary injunction initially set for September 15, 1980 but continued until December 18, 1980.

Extensive discovery was then conducted by the parties and Lyons submitted expert declarations, depositions and 49 exhibits in support of his motion.

On December 23, 1980, the district court made the findings of fact and conclusions of law (App. D hereto), and, based thereon, entered a preliminary injunction order (App.E hereto).

On December 24, 1980 the City obtained from the Ninth Circuit a stay of the preliminary injunction pending appeal. Up to this point, since January 1, 1975, ten persons had died from LAPD strangleholds: eight black males and two white males (App. A).

On February 3, 1981 the LAPD strangled to death Luel Marshall, a 41-year-old black male (App. A). On March 14, 1981, the LAPD strangled to death Charles J. Hill, a 40-year-old black male (App. A). On May 13, 1981, the LAPD strangled to death Robert Cousins, a 33-year-old white male (App. A). On July 28, 1981, the LAPD strangled

to death Arthur W. McNeil, a 30-year-old black male (App. A).

On March 16, 1981, Lyons filed his second amended complaint, a copy of which is reproduced at Appendix B hereto. Lyons had filed a motion for class certification on February 27, 1981 (66 days after the injunction was granted) which was opposed by the City on the grounds, *inter alia*, that its appeal was pending in the Ninth Circuit. The district court thereupon stayed Lyons' motion for class certification (as well as his motion for partial summary judgment) pending appeal. A copy of the court's order is reproduced as Appendix C hereto. This stay has not been lifted and Lyons' motion for class certification remains stayed.

On August 17, 1981, the Ninth Circuit court of appeals rendered its *per curiam* opinion (modified August 20, 1981) affirming the preliminary injunction, holding:

> "All the trial judge has done, so far, is to tell the City that its police officers may not apply life threatening strangleholds to persons stopped in routine police work unless the application of such force is necessary to prevent serious bodily harm to an officer. This relatively innocuous interference by the judiciary with police practice can hardly be characterized as an abuse of discretion when the record reveals that nine suspects* who have been stopped by the police and who have been subdued by the use of carotid and bar arm control holds have subsequently died, allegedly of the injuries sustained by the application of these holds. *Cf. Rizzo v. Goode*, 423 U.S. 362, 379, 46 L.Ed.2d 561, 96 S.Ct. 598, 608 (1976) (federal court may not order sweeping structural relief requiring federal court supervision of state police procedures absent 'extraor-

*The court of appeals was unaware of the undiscovered or intervening deaths of Acree, Marshall, Hill, Cousins and McNeil.

dinary circumstances')." *Lyons v. City of Los Angeles (Lyons II)* 656 F.2d 417 (9th Cir., August 17, 1981) (modified August 20, 1981) (per curiam) *mandate stayed pending cert.* ... U.S. ..., 69 L.Ed.2d 1015, 102 S.Ct. 14 (September 29, 1981).

The City unsuccessfully petitioned the court of appeals for rehearing, or, alternatively, a stay pending disposition of a petition for writ of certiorari. The City thereupon successfully petitioned Mr. Justice Rehnquist for the stay. ... U.S. ..., 69 L.Ed.2d 1015, 102 S.Ct. 14 (September 29, 1981). If the petition for certiorari is denied, the stay order will automatically terminate.

## 3. Facts

### A. The City's Stranglehold Policy Is Confusing and Ambiguous

The City of Los Angeles expressly trains its officers and authorizes them to use strangleholds in no fewer than 11 different types of situations.

1. Strangleholds can be used whenever a police officer "feels" there is about to be a bodily attack on him. (Exh. 45:70, Depo. of LAPD Training Officer Speer). Respondent was strangled unconscious when he threatened no one with bodily attack. (Exh. 1, Depo. of Adolph Lyons).
2. Strangleholds can be used "to gain control of a suspect who is violently resisting the officer *or trying to escape*." (emphasis added) (City's Opposition to Application for Preliminary Injunction, filed on or about December 1, 1980, p. 26 "Opposition" hereafter).
3. Strangleholds are authorized for use "in self defense and to overcome resistance." (Opposition, p. 21).

4. Strangleholds can be used to "subdue *any* resistance by suspects." (emphasis added) (Opposition, p. 30).
5. Strangleholds can be used "in situations where a police officer has a right to detain a suspect and that suspect resists that detention (Opposition, p. 91).
6. "[C]ontrol holds are used to overcome a combative suspect; . . ." (City's Reply Brief in *Lyons II*, p. 1, "Reply Brief" hereafter).
7. Control holds are used to subdue . . . *persons who are using physical force against a police officer*. (Reply Brief, 6:19-21).
8. Strangleholds can be used "where an officer is resisted, but not necessarily threatened with serious bodily harm or death, . . . to subdue a suspect who forcibly resists an officer." (City's Opening Brief in *Lyons II*, p. 33, "Opening Brief" hereafter).
9. Strangleholds can be used to "overcome attack by a weaponless suspect . . ." (Opening Brief, p. 39).
10. "Control holds . . . allow officers to subdue *any* resistance by the suspects." (Exh. 47, LAPD Training Bulletin, May, 1978, p. 1; Pet., Exh. H, p. 41a) (emphasis added).
11. "[C]ontrol holds are only used for overcoming resistance," (*Id.* p. 5; Pet., Exh. H, p. 48a).

Thus, officers in the field are justifiably confused about their authority to strangle. Can they strangle when they "feel like it" or when a jaywalker offers oral resistance to being handcuffed? These grossly contradictory standards demonstrate petitioner's callous disregard for the constitutional rights of its citizens.

**B. The City Is Grossly Negligent in Utilizing Police Training Bulletins**

The City contends that it has printed two training bulletins, one in July 1972 (Exh. 47) and one in May 1978 (Exh. 49, See Pet., Exh. H), which disclose stranglehold policy and dangers. Tragically, even this limited contention is wholly misleading.

These training bulletins are merely "available" to officers if they "choose to pursue" them (Deposition of City Police Training Officer Speer, Exh. 35, 39:22-28). Deputy Los Angeles Police Chief Ritter testified, "There has never been . . . any requirement that [a police officer] read [a training bulletin], understand it or be tested on it so we know he is fully aware of its contents." (Exh. 42:7). As a result, there is no way of knowing whether any Los Angeles police officers ever read or understand the policies and precautions recited in these bulletins.

Such gross neglect by petitioner is inexcusable. The bulletins do recite — if incorrectly — that death can result from a three minute application of the stranglehold. There is no justification for petitioner's careless disregard for its citizens' lives. But the situation is more egregious. The bulletins themselves — and accompanying training — are incorrect and omit to include significant stranglehold dangers.

**C. The City Provides Grossly Inadequate Stranglehold Training**

In addition to petitioner's lackadaisical procedure for distributing training bulletins, its stranglehold training is woefully inadequate considering the extreme dangers involved from use of the techniques.

One of the petitioner's experts, Robert Jarvis, taught at the Los Angeles Police Academy for the past 12 years (Exh. 44:8). He agrees with petitioner's expert Dr. Koiwai that

"you cannot render a suspect unconscious using a bar arm control" (Exh. 44:47). He says the bar arm is used to "[i]nflict pain to gain compliance," (Exh. 44:79) and that you continue to choke "for so long as the suspect is moving and has not given up" (Exh. 44:86). He then gave this ominous testimony:

Q. "Well, you have told me that the bar arm control will not deprive him of oxygen?"

A. "No, it could crush him and choke him to death, yes."

Q. "And that could happen in two seconds; could it not?"

A. "Sure, it could."

Q. "Do you teach them at the Academy that the bar arm control can result in death even if it is applied for just two seconds?"

A. "No, I don't believe so."

Q. "Is that anywhere in the bulletin?"

A. "No."

Q. "Why not?"

A. "I don't know. I can't answer that honestly." (Exh. 44:87).

A review of the Police Training Bulletins (Exh. 47 and 49) confirms that this information is missing.

The City tragically refuses to train its officers that strangleholds can and do result in death in a few seconds. Instead, the City teaches that the holds can be safely applied for up to three minutes (Pet., App. H, p. 48a).

The City trains its officers to strangle until resistance ceases (Pet., App. H, p. 51a). But the medical evidence led the district court to find that persons subjected to strangleholds instinctively or reflexively struggle for freedom which almost invariably is interpreted by the officer as further

aggression, prompting the officer to increase the force and duration of strangling.

Terry Speer testified as a City expert with 11 years experience as a training officer at the Los Angeles Police Academy (Exh. 45). He testified that the LAPD does not distinguish between felony suspects versus misdemeanor suspects in teaching acceptable methods of control (Exh. 45:18). He said the strangleholds can be used whenever an officer "feels" there is about to be a bodily attack on him (Exh. 45:70).

In 1978, after Whitehead's death from a broken neck, caused by a bar arm, an Assistant Chief inexplicably ordered the Academy to develop a control hold that took pressure off the *larynx*. The Academy followed orders and developed the "modified carotid" to be used as an alternative to the bar arm. But Academy personnel thought the Chief was incompetent and did not understand what was being taught (Exh. 45:60-61 and 67-69). Speer had no idea whether deaths or injuries have been reduced or increased by development of the alternative (Exh. 45:88-89).

Ray Sua, a Police Academy instructor, testified as a City expert that the bar arm control was not a "pain compliance hold" (Exh. 43:23-24) but was an "unconsciousness rendering hold" (Exh. 43:25). Yet the May 1978 Training Bulletin (Exh. 47; Pet., Ex. H, p. 48a) refers to it as a "pain compliance hold" and another City expert, Dr. Koiwai, says it cannot cause unconsciousness. When the City's training instructor and experts cannot agree about the purpose and effect of a stranglehold, how can an officer in the field be expected to know when a stranglehold can properly be used or released?

Lyons is clearly entitled to relief for this grossly negligent failure to advise, train and supervise. *Owens v. Haas*, 601

F.2d 1242, 1247 (2nd Cir., 1979), *cert. den., sub nom. County of Nassau v. Owens*, 444 U.S. 980, 62 L.Ed.2d 407, 100 S.Ct. 483 (1979); *Leite v. City of Providence*, 463 F.Supp. 585, 590-591 (D.C.R.I., 1978).

**D. Strangulation Is Unconscionable in a Civilized Society**

Unnatural death by slow strangulation is hideously different from more ordinary means of homicide. The most common homicide — murder by gunshot — is accompanied by pain of minimal duration. The mortal wound often results in instant death, particularly when inflicted in the head or heart. Otherwise, it induces shock to the central nervous system which conveniently obliterates pain. Likewise, mortal knife wounds and bludgeon strokes induce shock resulting in swift, merciful unconsciousness to pain.

Hanging inflicted by the State is carefully designed to assure that at least the physical pain is minimized. The condemned is generally positioned to assure that he falls a sufficient distance quickly to separate his spinal column from his brain at the neck.

But slow strangulation is unique in inflicting agony and terror.

> "The frontal area of the neck is highly innervated with both sensory and motor nerves. The laryngeal and pharyngeal nerves are directly affected by the pressure exerted in a bar arm control. The traumatic interferences on these nerves can have at least two adverse effects. It can result in a laryngeal spasm or seizure which simply shuts off the tracheal air passage, leading to death by asphyxiation. Also, it must result in transmission to the brain of nerve messages that there is immediate, acute danger of death. This transmission immediately sets up a 'fight or flee' syndrome wherein the body reacts violently to save itself or escape. Adrenalin output increases enormously; blood oxygen

> is switched to muscles and strong, violent struggle ensues which is to a great extent involuntary . . . [an] involuntary death struggle." (Declaration of Alex Griswold, M.D., Exh. 37, p. 4).

Such strangulation is a "dangerous and sensitive activity. It is the type of force that, more than any other, is likely to result in violent resistance by the arrestee." *People v. Trevino*, 72 Cal.App.3d 686, 692, 140 Cal.Rptr. 243 (1977). In a manual criminal strangulation, "strangulation may be quickened by the struggling of the victim, the inhalation of vomitus or by shock triggering a vagal nerve mechanism." Moenssens and Ibau, *Scientific Evidence in Criminal Cases* 2d Ed. (Foundation Press, 1978) pp. 228-229.

> "[P]ressure on both carotid sheaths also results in pressure, if inadvertent or unintended, on both vagus nerves . . . [s]timulation of these nerves can activate reflexes . . . that can result in immediate heart stoppage (cardiac arrest)." (Respondent's Expert, Alex Griswold, M.D., Exh. 37, p. 5:26-28, p. 6:3-5).

Los Angeles police officers generally and callously refer to applying the stranglehold as causing the victim to "do the chicken." (Deposition of City's expert Jarvis 44:93). Genesis of this term appears to arise from the strangulation symptoms of a chicken when its neck is wrung off.

The victim suffers "excruciating" pain. (Deposition of City's expert Eichi Koiwai, M.D., Exh. 40:51).

> "[V]iolent struggle" is "very definitely likely" to ensue (Deposition of City's Medical Director, Thrift Hanks, M.D., Exh. 38I:88) with the victim seeking to "flee or escape." (Deposition of City's expert Jarvis, Exh. 44:47). The victim's face turns blue, becoming cyanotic (lacking oxygenated blood); his eyes roll back and he goes into a spasmodic state of convulsions.

(*Id.* 83). The victim "jerks," (Deposition of City's expert Speer, Exh. 45:5, 94) "his body wiggles, his feet kick up and down and his arms move about wildly." (Deposition of City's expert Sua, Exh. 35:68-70).

In its terminal aspects, strangulation death is also attended by involuntary urination and defecation (Deposition of City's expert Eichi Koiwai, M.D., Exh. 40:163-164) which respondent suffered (Deposition of Adolph Lyons, Exh. 1:43). Death can result in seconds (Deposition of City's expert Jarvis, Exh. 44:87; Deposition of respondent's expert Griswold, M.D., Exh. 37, 4:26-27) or, "in up to three minutes" (City's Opening Brief, 10:18-25; 13:19-21).

The consensus of the experts in this case is that the strangleholds are extremely dangerous.

Respondent's expert Bruce Tegner, author of books on martial arts which have sold more than 3,000,000 copies, and a former instructor of killing techniques in the U.S. Army, declares:

> ". . . choking force against the windpipe involves a high risk of fatality." (Exh. 35:3, lines 22-24).
>
> ". . . pressure should not be applied to the windpipe unless death is the desired result." (Exh. 35:3, lines 7-8).
>
> The LAPD bar arm control "constitutes use of deadly force and involves a high degree of risk of fatality." (Exh. 35:4:8-12).

One of the Army killing techniques Tegner taught was the LAPD bar arm control (Exh. 35; 4:2-6).

Respondent's expert, Dr. Griswold, declared that both the bar arm control and carotid control are "extremely dangerous in an unpredictable fashion" (Exh. 37, 3:4-15, 5:13-1[illegible]). He said both involve "an unpredictably high risk of death to the victim" (Exh. 37, 5:8-11, 6:16-19).

Respondent's expert, Dr. Fine, rendered his "strongly held" medical opinion that the strangleholds were "particularly dangerous." (Exh. 36, 2:11-16).

The City asserts that these strangleholds are "derived from the sport of judo" (Pet., p. 7). The City neglects to mention that in competitive judo (vs. police strangulation on the streets of Los Angeles), a stranglehold victim (i) understands that no one is attempting to kill him, (ii) may obtain immediate release by signaling his opponent, and (iii) is protected by close referee's supervision and attendance of personnel trained in cardio-pulmonary resuscitation.

**E. The City's Reporting Practices Are Inadequate**

The district court's finding that the LAPD does "not now have regulations which mandate a written report of the use of such force [to wit, strangleholds] unless death results from the application thereof" is correct, if slightly incomplete.

When death does not result, officers generally write on the arrest report that "an altercation ensued whereupon the suspect was subdued." This "report" is something less than enlightening.

Where death results, an extensive Robbery-Homicide or "OIS" report is prepared that is maintained secret from Police Academy personnel because of fear of discovery during possible litigation.

**F. Less Intrusive Alternatives Exist**

The City continues to assert that, if the injunction becomes effective, its officers will be required to use batons and karate kicks which it "believes" will result in "more frequent and more severe injuries to and more frequent deaths of suspects." (Pet. p. 12). This assertion is wholly

unsupported by any evidence before the district court. The City has never offered any evidence that severe injury or even one single death has resulted from use of these alternative techniques.

Pervading the City's petition is the misconceived implication that the injunction *prohibits* strangleholds which are necessary tools for police work.

> ". . . the control holds are necessary . . ." (Pet. p. 9). ". . . elimination of the control holds may result in an increase in the frequency and severity of injuries to officers" (Pet. p. 12). ". . . if the holds are prohibited, other force techniques require release of the subject . . ." (Pet. p. 22). "If use of the control holds is enjoined, the federal judiciary will have created a significant void in the Los Angeles Police Department's use of force policy." (Pet. p. 22).

Respondent has never sought to prohibit use of strangleholds. See *Lyons I*, 615 F.2d at 1244, n.1. Nor does the preliminary injunction prohibit use of strangleholds. It recognizes that they constitute deadly force and accordingly, limits use to appropriate situations.

The City asserts that strangleholds are used by "most major police departments in the country" (Pet., p. 7). However, according to the City, neither the Chicago nor the Boston police departments use any stranglehold whatsoever no matter what force is threatened (Dionne Deposition, Exh. 5). The bar arm control is not used, regardless of the force threatened, by the U.S. Army, Beverly Hills Police Department, Glendale Police Department, Santa Monica Police Department, South Pasadena Police Department, U.S. Navy, New York Police Department (with 22,000 sworn personnel), California Highway Patrol, Los Angeles County Sheriff's Department or San Diego County Sheriff's Department (Dionne Deposition, Exh. 5; Responses to Re-

quests 261, 262, 265, 269, 271, and 273, Exh. 27). The City further neglects to mention that most of the major police departments which do employ strangleholds employ them only pursuant to express policies at the level specified in the district court's injunction — to wit, when serious bodily harm or death is threatened.

If these reputable police agencies have found less intrusive alternatives (which the City has never even inquired about) allowing either elimination of strangulation or limitation to serious situations, why must the LAPD persist in strangulation without limitation?

## REASONS FOR DENYING THE WRIT

### I.

### THE COURT OF APPEALS HAS NOT DECIDED A FEDERAL QUESTION IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT

#### (1) An Article III, § 2 Case or Controversy Exists in This Case

Petitioner claims that the instant decision conflicts with *O'Shea v. Littleton*, 414 U.S. 488, 38 L.Ed.2d 674, 94 S.Ct. 669 (1974) and *Rizzo v. Goode*, 423 U.S. 362, 46 L.Ed.2d 561, 96 S.Ct. 598 (1976). Justices White, Powell and Rehnquist have expressed similar concerns in the instant case.

> "*O'Shea* and *Rizzo* made clear that the federal courts are not the forum in which dissatisfied citizens may air their disagreements with government policy . . . unless they demonstrate a 'personal stake in the outcome.' *Baker v. Carr*, 369 U.S. 186, 204 (1962) . . ." *Lyons I*, 449 U.S. at 934 (1980) (Justices White, Powell and Rehnquist, dissenting).

Lyons and other Los Angeles inhabitants are clearly entitled to relief for violation of their due process rights arising

from the City's grossly negligent failure to advise, train and supervise. *Owens v. Haas*, 601 F.2d 1242, 1247 (2nd Cir. 1979), *cert. den. sub nom. County of Nassau v. Owens*, 444 U.S. 980, ... L.Ed.2d ... , 100 S.Ct. 483 (1979); *Leite v. City of Providence*, 463 F.Supp. 585, 590-591 (D.C.R.I., 1978) The first question is whether they have a sufficient personal stake in the outcome to be entitled to equitable relief. A close analysis of *O'Shea* and *Rizzo* demonstrates that these cases do not preclude such relief here.

In *O'Shea*, this Court held that the case-or-controversy requirement of Article III was not satisfied when persons complained that *if* they violated a law, *if* they were charged, *if* they were held to answer and *if* they were tried, they might be subjected to discriminatory practices by a local judge.

The instant case is clearly distinguishable. Respondent a young black male, was stopped by Los Angeles police officers because one of the taillights on his car was burned out — whereupon, without any provocation or reason to fear for their safety, police officers strangled him unconscious.

The police department actively trains and encourages use of these strangleholds in non-life-threatening situations. At least 14 deaths have resulted. Lyons is not seeking to work his way through a five-fold process, as plaintiffs did in *O'Shea*. He is pleading that as soon as you get stopped by Los Angeles police — even for a misdemeanor crime requiring no intent such as a burned out taillight — you may be strangled to death, as a matter of unconstitutional policy.

As the court of appeals noted, "the odds of having that sort of encounter are much greater than the odds of having the sort of encounters described in *O'Shea* or in *Rizzo*, and therefore meet the constitutional requirements of 'case' or

'controversy' " giving Lyons standing to seek injunctive and declaratory relief. *Lyons I*, 615 F.2d at 1246-1247.

Unlike the situations in *Rizzo* and *O'Shea*, death is threatened here. Unlike *Rizzo* and *O'Shea*, there is no contemplated extended procedure of commission of a crime, detention, arrest, booking, refusal to investigate citizens' complaints, refusal to discipline, charging, prosecution or discriminatory bail setting. None of these instances occur absent review within a few seconds, resulting in death. And the strangulations are being repeated — 138 times with two deaths in the first quarter of 1981 alone (Pet. p. 11, n. 9, see also, App. A). As the court of appeals noted, "[i]f Lyons is denied standing to pursue his claim, it is doubtful that anyone will be able to challenge the use of the stranglehold [sic] because of the circumstances under which they occur." *Lyons I*, 615 F.2d at 1249. Is the next person threatened with a stranglehold supposed to excuse himself, go home, type up an application for a temporary restraining order and deliver it for consideration to the district court? Or is he "outlawed" — subject to death "if he runs after being called on to surrender?" *Autry v. Mitchell*, 420 F.Supp. 967, 970 (E.D.N.C., 1976), where the court asserted:

> "We agree . . . that one who has been declared to be an outlaw (or his administrator) need not wait until he has been wounded or killed in order to obtain standing to bring suit challenging the validity of the [outlawry] statute." 420 F.Supp. at 969.

This Court appears to have precluded the survivors of victims of police use of deadly force from obtaining equitable relief declaring use of force statutes unconstitutional. Survivors lack standing because "emotional involvement in a lawsuit is not enough to meet the case or controversy requirement. . . ." *Mattis v. Schnarr*, 547 F.2d 1007 (8th

Cir., 1976), *vac. sub nom. Ashcroft v. Mattis*, 431 U.S. 171, 173, 52 L.Ed.2d 219, 222, 97 S.Ct. 1739 (1977).

The Court has also precluded punitive damages against a municipality as a deterrent of future abuses under color of law. *City of Newport v. Fact Concerts, Inc.*, ... U.S. ..., 69 L.Ed.2d 616, 101 S.Ct. 2748 (1981).

Then surely, a living black male, once almost killed by a stranglehold, can obtain the limited protection remaining against this horror: a carefully proscribed federal injunction. This quiet, direct deterrence must be allowed unless the guarantees of the 14th Amendment, codified in 42 U.S.C. § 1983 to provide equitable relief to individuals, are to become no more than an empty facade with untimely death compensable by a few dollars.

The court of appeals also found that there were independent reasons for granting Lyons relief because he was then seeking very narrow relief: a declaration that the strangleholds constitute the use of deadly force and/or an injunction against use of strangleholds, not in every instance, but only *absent the threat of deadly force*. He was not seeking any massive structural relief such as was sought in *Rizzo*.

In *Rizzo, supra*, plaintiffs sought massive structural relief enjoining misconduct by a "small, unnamed minority of policemen [who] might do [something] to them in the future because of that unknown policeman's perception of departmental disciplinary procedures." 423 U.S. at 372, 46 L.Ed.2d at 570, 96 S.Ct. at 605. Lyons seeks carefully limited *preventative* relief (rather than structural relief) from departmentally authorized conduct (rather than misconduct) by all Los Angeles police officers who strangle a hugely disproportionate percentage of black males to death because of the officers' correct perception of express written departmental policy about when strangleholds can be applied.

Black males constitute only nine percent (9%) of the population of the City of Los Angeles, yet a black male is 20 times more likely to be subjected to a police stranglehold than a white male. This is wholly unlike *Rizzo* where "there was no affirmative link between the occurrence of the various instances of police misconduct and the adoption of any plan or policy by [defendants] — express or otherwise — showing their authorization or approval of such misconduct." 423 U.S. at 371, 46 L.Ed.2d at 569.

In the instant case, unlike *Rizzo*, there is a direct affirmative link between

(i) the adopted City policy authorizing and approving strangulation; and

(ii) the citizen strangulations, with attendant agony, fear, terror and — sporadically — death.

The City's view is that stranglehold application, in the 11 different circumstances described above, does not constitute "misconduct." However, in the view of the district court, strangulation "where death or serious bodily harm is not threatened is unconscionable in a civilized society" constituting "a violation of the 14th Amendment due process clause, substantive due process, [which] shocks the conscience of the court." (App. D, p. 33) "The elementary requirements of a use of force rule under § 1983 must be that it neither permits 'brutal police conduct,' (cites omitted) nor allows such 'application of undue force' that the police conduct 'shocks the conscience.' (cites omitted)" *Jones v. Marshall*, 528 F.2d 132, 139 (2nd Cir., 1975).

The *Rizzo* citizens were seeking relief to which they had no constitutional right, to wit, improved police procedures for handling citizen complaints. The *Lyons* claimants seek a simple adjustment in when police can strangle them in violation of their constitutional rights

(i) to be "secure . . . against unreasonable seizures" (U.S. Constitution, Amendment IV); and

(ii) not to be deprived of "life, liberty or property, without due process of law" (U.S. Constitution, Amendment XIV).

At the extreme — wholly aside from the agonal consequences of all stranglehold applications — police strangulation imposes death on "a capriciously selected random handful" of unconvicted victims. *Furman v. Georgia*, 408 U.S. 238, 309, 33 L.Ed.2d 346, 390, 92 S.Ct. 2726 (1972).

Respondent, as well as all other inhabitants — particularly black males — of Los Angeles, have a personal stake in the outcome. *Baker v. Carr, supra.* The stranglehold deaths, including four within the past year, continue to occur. They justify respondent's real, continuing mental distress and rising fear that, as a black man, he may die from a police stranglehold.* This "continuing, present adverse effect" coupled with the "real and immediate threat of repeated injury" entitle respondent to equitable relief. *O'Shea v. Littleton, supra,* at 495-496.

### (2) The "Capable of Repetition, Yet Evading Review" Criteria Confers Standing

Even if the Court were to determine that respondent's claim is moot because he cannot show that he now personally and immediately is about to be subjected to a strangle-

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*Respondent is now, as Coleridge wrote in "The Ancient Mariner," Part VI, st. 10:

"Like one, that on a lonesome road
Doth walk in fear and dread,
And having once turned round, walks on,
And turns no more his head;
Because he knows, a frightful fiend
Doth close behind him tread."

hold, he nonetheless is entitled to invoke the equity jurisdiction of the federal court.

The policy which respondent challenges is particularly within the mootness exception of "capable of repetition, yet evading review." *Southern Pacific Terminal Company v. Interstate Commerce Commission*, 219 U.S. 498, 515, 55 L.Ed. 310, 31 S.Ct. 279, 283 (1911).

Justice White's suggestion that police strangulation does not "evade review . . . because the constitutional issue would be addressed in a damage action brought under § 1983," (*Lyons I*, 449 U.S. at ..., n. 1, 101 S.Ct. at 334, n. 1, 66 L.Ed.2d at 159, n. 1) overlooks the fact that no human being can be compensated for premature, unintended, and unjustified death.

How much money would you now simultaneously exchange for your life or the life of your child or spouse? Respondent submits that no amount of money would induce you to enter into such a contract. You would inevitably prefer — as the United States Constitution guarantees — not to be deprived of your own or your loved ones' lives, absent due process of law, at any price.

The ongoing stranglehold policy attacked here is capable of implementation only for a few seconds. Unless respondent has standing to challenge it, the 14th Amendment will have been interpreted to read:

> No . . . State [shall] deprive any person of life, liberty, or property, without due process of law, *except where such deprivation is momentary*.

Such a standing requirement would lead to the anomalous situation where no person would be able to challenge as unconstitutional, a police policy which read:

> "Officers shall shoot to kill any black male stopped for a traffic violation."

The fallacy inherent in petitioner's argument is that it invites this Court to adopt a rule that if a governmental policy results in regular deprivation of constitutional rights in a fleeting manner on randomly selected (but disproportionately black male) persons, then the federal courts are powerless to intervene. But such intervention has occurred with the approval of this Court.

In *Dunn v. Blumstein*, 405 U.S. 330, 31 L.Ed.2d 274, 92 S.Ct. 995 (1972), Blumstein, a Tennessee resident brought a class action challenging state laws which would have precluded him from voting in the next state election in August and November of 1970 because he would not then have been a resident for one year. A three-judge court declared the laws unconstitutional and a direct appeal to this Court followed. The Court noted that, at the time of its decision (in 1972), Blumstein had satisfied the residence requirements and could vote. But the case was not moot.

> ". . .the problem to voters posed by the Tennessee residence requirements is 'capable of repetition, yet evading review.' [citations omitted] . . . the laws in question remain on the books, and Blumstein has standing to challenge them as a member of the class of people affected by the presently written statute."

The problem to Los Angeles inhabitants posed by the LAPD stranglehold policy is continuing to be repeated, yet evading review. The policy remains in effect, a disproportionate number of black males continue to die and respondent has standing to challenge the policy as a member of the class of people affected.

Petitioner incorrectly claims that respondent "represents only himself" and that his complaint contains no class allegations (Pet. p. 18). This is not true. See Appendix B hereto at pages 20 through 25. Petitioner then recites, without any authority, that "[e]ven where the action is brought

as a class action, preliminary injunctive relief should not be granted prior to class certification." (Pet. p. 19). This position flies in the face of the *City's* successful argument below that class certification should be stayed pending appeal, or, alternatively, that no class certification is required.

The district court had ample authority to issue the preliminary injunction prior to class certification. See *Elrod v. Burns*, 427 U.S. 347, 49 L.Ed.2d 547, 96 S.Ct. 2673, (1976) (holding proper court of appeal's direction to issue preliminary injunction prior to class certification).

*Gerstein v. Pugh*, 420 U.S. 103, 43 L.Ed.2d 54, 95 S.Ct. 854 (1975) involved a class action initiated by persons arrested without warrants who claimed they were entitled, under the United States Constitution, to a judicial determination of probable cause for continued pretrial detention. Claimants' detention had ended by the time of oral argument. But the Court noted:

> "This case belongs . . . to that narrow class of cases in which the termination of a class representative's claim does not moot the claims of the unnamed members of the class. See *Sosna v. Iowa*, 419 U.S. 393, 42 L.Ed.2d 532, 95 S.Ct. 553 (1975). Pretrial detention is by nature temporary, and it is most unlikely that any given individual could have his constitutional claim decided on appeal before he is either released or convicted. The individual could nonetheless suffer repeated deprivations, and it is certain that other persons similarly situated will be detained under the allegedly unconstitutional procedures. The claim, in short, is one that is distinctly 'capable of repetition, yet evading review.'
>
> * * *
>
> "It is by no means certain that any given individual, named as plaintiff, would be in pretrial custody [or

> strangulation] long enough for a district judge to certify the class. Moreover, in this case, the constant existence of a class of persons suffering the deprivation is certain." 420 U.S. at 110, n. 11, 43 L.Ed.2d at 63, n. 11, 95 S.Ct. 854.

See also *Swisher v. Brady*, 438 U.S. 204, 213, n. 11, 57 L.Ed.2d 705, 713-714, n. 11, 98 S.Ct. 2699 (1978).

**(3) Class Members Have Standing Because of the Short Duration of Strangulation**

If Lyons' claim has been terminated, this does not render moot the claims of the unnamed members of the class. Strangulation is by nature temporary and it is certain that no individual could have his constitutional claim filed, much less certified as a class action or decided on appeal, before the strangulation ceases or his death occurs. Lyons, as a black male, could suffer repeated deprivations, and it is certain that other persons similarly situated will be unconstitutionally strangled. This claim is one that is "*certain* of repetition, yet evading review."

In *Weinstein v. Bradford*, 423 U.S. 147, 46 L.Ed.2d 350, 96 S.Ct. 347 (1975), this Court considered the standing of a prisoner to bring an action, which the district court had refused to certify as a class action, alleging that parole board members were constitutionally obligated to afford certain procedural rights in considering eligibility for parole. The Court held that the former prisoner, having been temporarily paroled and completely released from supervision prior to grant of certiorari, no longer had any present interest affected by the government policy he had challenged and where there was no demonstrated probability that the former prisoner would again be among those who would be subject to the continuing supervision of the parole system. The Court stated:

> "[*Sosna v. Iowa*, 419 U.S. 393, 42 L.Ed.2d 532, 95 S.Ct. 553 (1975)] decided that *in the absence of a class action*, the 'capable of repetition, yet evading review' doctrine was limited to the situation where two elements combined:
>
> (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and
>
> (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." 423 U.S. at 149, 46 L.Ed.2d at 353 (emphasis added).

The *Sosna* criteria recited above is not applicable to the instant case where class certification has been sought but stayed pending appeal.

In *Sosna v. Iowa*, 419 U.S. 393, 42 L.Ed.2d 532, 95 S.Ct. 553 (1975) Mrs. Sosna had filed a divorce action one month after moving to Iowa. The state court dismissed her action for lack of jurisdiction because she had not satisfied a statutory one-year residence requirement. She brought a class action in the United States District Court seeking injunctive and declaratory relief on the grounds that the residence requirement violated the United States Constitution. A three-judge court certified the class (by stipulation of the parties) and upheld the constitutionality of the residency requirement. She appealed directly to this Court, which affirmed, notwithstanding that Mrs. Sosna had not only by then satisfied the Iowa residency requirement, but had also obtained a divorce in another state. The Court noted:

> "[Sosna] brought this suit as a class action and sought to litigate the constitutionality of the durational residency requirement in a representative capacity. When the District Court certified the propriety of the class action, theclass of unnamed persons described in the

certification acquired a legal status separate from the interest asserted by appellant. We are of the view that this factor significantly affects the mootness determination." 419 U.S. at 399, 42 L.Ed.2d at 540.

* * *

"[e]ven though appellees in this proceeding might not again enforce the Iowa durational residency requirement against appellant, it is clear that they will enforce it against those persons in the class that appellant sought to represent and that the District Court certified. In this sense the case before us is one in which state officials will undoubtedly continue to enforce the challenged statute and yet, *because of the passage of time, no single challenger will remain subject to its restrictions for the period necessary to see such a lawsuit to its conclusion*." 419 U.S. at 400, 42 L.Ed.2d at 541 (emphasis added).

* * *

"We believe that a case such as this, in which . . . the issue sought to be litigated escapes full appellate review at the behest of any single challenger, does not inexorably become moot by the intervening resolution of the controversy as to the named plaintiffs." 419 U.S. at 401, 42 L.Ed.2d at 541.

* * *

"This view draws strength from the practical demands of time. A blanket rule under which a class action challenge to a short durational residency requirement would be dismissed upon the intervening mootness of the named representative's dispute would permit a significant class of federal claims to remain unredressed for want of a spokesman who could retain a personal adversary position throughout the course of the litigation." *Id.* footnote 9.

The instant case is an uncertified class action challenge to a short durational stranglehold policy.

> "There may be cases in which the controversy involving the named plaintiffs is such that it becomes moot as to them before the district court can reasonably be expected to rule on a certification motion. In such instances, whether the certification can be said to 'relate back' to the filing of the complaint may depend upon the circumstances of the particular case and especially the reality of the claim that otherwise the issue would evade review." 419 U.S. at 402, n. 11, 42 L.Ed.2d at 542, n. 11.

See also *Roe v. Wade*, 410 U.S. 113, 35 L.Ed.2d 147, 93 S.Ct. 705, *reh. den.* 410 U.S. 959, 35 L.Ed.2d 694, 93 S.Ct. 1409 (1973) (termination of pregnancy during abortion litigation "a classic justification for nonmootness").

Absent certification, this case must nonetheless be treated as a class action to assure that the unknown members of the class are not prejudiced. *City of Inglewood v. City of Los Angeles*, 451 F.2d 948, 951 (9th Cir., 1971) citing Frankel, *Some Preliminary Observations Concerning Civil Rule 23* (D.C. 1968) 43 F.R.D. 39, 41-42; 3B *Moore's Federal Practice* ¶23.50 at 423-424.

The constitutionality of LAPD stranglehold policy is a significant issue which will forever evade review if this Court should hold that only some unknown victim threatened within a few seconds by an immediate LAPD stranglehold has standing to sue.

> "[T]his set of facts fits within a 'narrow class of cases' where a contrary rule would lead to the 'reality' that 'otherwise the issue would evade review. . .' " *Deposit Guar. Nat. Bank. v. Roper*, 445 U.S. 326, 341, 63 L.Ed.2d 427, 442, 100 S.Ct. 1166 (1980), *reh. den.* 446 U.S. 947, 64 L.Ed.2d 804, 100 S.Ct. 2177.

The challenge is to an established, written stranglehold policy that instills true fear and terror in respondent and other Los Angeles inhabitants. Such a "deliberate policy" is properly subject to the district court's injunction. *Hague v. CIO*, 307 U.S. 496, 83 L.Ed. 1423, 59 S.Ct. 954 (1938), *Allee v. Medrano*, 416 U.S. 802, 40 L.Ed.2d 566, 94 S.Ct. 2191 (1974).

**(4) The Decision in Lyons II Is in Accordance With the Principles of Federalism and Equity**

The court of appeals in *Lyons II* recognized the standards set down by this Court in *Rizzo* that an injunction is proper in "extraordinary circumstances." (423 U.S. at 379, 46 L.Ed.2d at 574, 96 S.Ct. at 608). 656 F.2d at 418. Fourteen deaths, coupled with the discriminatory impact on black males, are most extraordinary, clearly justifying federal intervention on a much more intrusive scale than has occurred.

Respondent has established the City's liability in the manner mandated by *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658, 694, 56 L.Ed.2d 611, 98 S.Ct. 2018 (1978).

> "[I]t is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." *Id.*

The court of appeals properly rejected the City's argument that the City has been acting in good faith. Municipal good faith is no defense in an action for deprivation of life under color of law but without due process of law. *Owen v. City of Independence*, 445 U.S. 622, 63 L.Ed.2d 673, 100 S.Ct. 1398 (1980). A municipality is properly subject to federal injunction against a municipal policy which mandates the routine use of excessive force.

The injunction is, as found by the court of appeals, "relatively innocuous" in view of the numerous deaths; it merely stops the police from strangling unless serious bodily harm is threatened and it expires of its own accord when an adequate training program is instituted.

Petitioner claims that the federal judiciary will have "assumed control of an important aspect of training" of Los Angeles police officers (Pet. p. 23). This claim is clearly spurious. Petitioner admits that only 12 of 960 hours (about 1%) of Academy training is devoted to strangleholds (Pet. p. 9).

Petitioner claims that the reporting system mandated by the district court "interjects the federal courts into the day-to-day running of a municipal police department." (Pet. p. 23). Yet the reporting system mandate expires with the injunction and is otherwise redundant since petitioner claims to have had just such a system for at least ten years (Pet. p. 10).

## II.
## THE ISSUES ARE NOT RIPE FOR SUPREME COURT ADJUDICATION

The action is at an interlocutory stage. There has been no trial and no opportunity to assess the credibility of witnesses. There is no trial transcript to review.

Respondent's motion for class certification has been stayed at petitioner's request pending appeal. Thus, the district court has yet to determine numerous issues which ought to be resolved prior to this Court exercising jurisdiction. These include whether respondent's claim is typical of class claims and whether respondent will fairly and adequately protect the interests of the class. The district court may require publication of notice to the class so that members

who prefer strangulation to the threatened baton alternative can intervene.

> "[T]his court should not issue a writ of certiorari to review a decree of the circuit court of appeals or an appeal from an interlocutory order, unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause." *American Construction Co. v. Jacksonville, T & K.W.R. Co.*, 148 U.S. 372, 384, 37 L.Ed. 486, 13 S.Ct. 758 (1892); *Brotherhood of Locomotive Firemen v. Bangor & Aroostook R.R.*, 389 U.S. 327, 19 L.Ed.2d 560, 561, 88 S.Ct. 437 (1967) ("because the court of appeals remanded the case, it is not yet ripe for review by this Court.").

If the writ is denied, no extraordinary inconvenience or embarrassment will incur. Presumably, petitioner will tell its police officers not to strangle unless they are threatened with serious bodily harm. And, hopefully, the terror will abate and deaths will cease.

## CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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*Attorneys for Respondent*

## APPENDIX A

### LAPD Stranglehold Deaths
### January 1, 1975 Through July 28, 1981*

1. CARL MICHAEL MIDDLETON

On May 27, 1975, Carl Michael Middleton, was a 25 to 30 year-old black male.

The secret LAPD Robbery-Homicide Report of his arrest (Exhibit 3) shows that Officer A.W. Richardson straddled Middleton (who was prone on the street) and strangled him unconscious with a "bar arm" in about six seconds (Exhibit 3, p. 7). Middleton's hands were then handcuffed behind him and he regained consciousness. A few moments later, Officer K.R. Haight strangled Middleton (who was sitting on the pavement) into unconsciousness in 20 seconds with a bar arm. Middleton regained consciousness again and was being placed in a police car when, after he pleaded, "What did I do," Officer R.K. Cochran strangled him 25 more seconds into unconsciousness with a bar arm. (Exhibit 3, p. 8). As he regained consciousness, Officer R.L. Hunter strangled him 30 more seconds into unconsciousness with a bar arm until he went limp (Exhibit 3, p. 8). A few seconds later, Middleton had no pulse beat and, within minutes Middleton was pronounced dead at Morningside Hospital (Exhibit 3, p. 9).

The Deputy Los Angeles Medical Examiner who performed the autopsy on Middleton five hours later ascribed the cause of death as "strangulation" and described the injuries as follows:

> (1) Fractured cricoid cartilage and a crushed thyroid cartilage with hemorrhages to the surrounding tis-

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*References to exhibits in this appendix refer to exhibits in the record on appeal and not to exhibits presented with this Opposition.

sues. The injuries were "fatal." (Exhibit 3, p. 9). According to this doctor, these injuries were compatible with the holds and force employed to Middleton's throat. (Exhibit 3, p. 10).

The Report of Los Angeles County Medical-Examiner Coroner No. 75-6506 on Middleton, Exhibit 2 states:

> "I performed an autopsy on the body of Carl M. Middleton at Department of Chief Medical-Coroner, 1104 N. Mission Road, Los Angeles, CA, on May 27, 1975 at 1000 hours. From the anatomic findings and pertinent history I ascribe the death to (A) ASPHYXIATION due to or as a consequence of (B) MANUAL COMPRESSION OF THE NECK."

The mode of death was "homicide" rather than "accident."

The City admits its officers applied the strangleholds on Middleton (Exhibit 27, Response to Requests 179, 180 and 181) but claims they did not intend to use deadly force or to kill him.

## 2. FRANK FAIRBANKS

On August 10, 1975, Frank Fairbanks was a 21-year-old Caucasian male.

The secret LAPD Robbery-Homicide Report on his death shows that Los Angeles police officer C.G. Zeuner strangled Fairbanks with a bar arm for "approximately 4 seconds," that Fairbanks did not become unconscious but relaxed and "was breathing regularly" (Exhibit 5, p. 5). A few seconds later, no one could detect a pulse. After eight minutes of vigorous resuscitation effort by Fairbanks' father—relieved by Officer Zeuner—a rescue team pronounced Fairbanks dead.

The Report of the Los Angeles County Medical Examiner-Coroner No. 75-9571 (Exhibit 4) states:

> "I performed an autopsy of the body of Frank Fairbanks . . . on August 10, 1975 at 1230 hours. From the anatomic findings and pertinent history I ascribe death to (A) ACUTE CARDIORESPIRATORY ARREST due to or as a consequence of (B) COMPRESSION OF THE NECK."

The anatomic findings included "perilaryngeal hemorrhage" and "mucosal hemorrhage of left vocal cord and larynx." There also were bruises on the larynx and the pharynx above the cricoid cartilage. The left vocal cord was discolored and hypermic (engorged with blood). Fresh blood had also separated the muscle fibers of the perilaryngeal muscle.

The City admits its officer *attempted* to apply a stranglehold on Fairbanks but claims the officer did not intend to use deadly force or to kill him (Exhibit 27, Response to Requests 173, 174, and 175).

### 3. BOOKER T. FORD, JR.

On November 4, 1975, Booker T. Ford, Jr. was a 28-year-old black male.

The secret LAPD Robbery-Homicide Report of his death (Exhibit 7) shows that Los Angeles police officer Robert Hyde accompanied by three other officers sometime shortly after 0256 that date, without saying any word to Ford, applied a bar arm stranglehold to Ford. Ford was strangled while he was on his feet and while he was prone on the floor. A few seconds later, Ford stopped breathing and had no pulse beat. The officers did not seek to resuscitate Ford. They requested an ambulance at 0312; it arrived at the scene at 0316 and Ford was pronounced dead at 0323.

The Report of the Los Angeles County Medical Examiner-Coroner No. 75-13320 (Exhibit 6) states:

"I performed an autopsy on the body of Booker Ford . . . on November 4, 1975 at 0830 hours. From the anatomic findings and pertinent history, I ascribe death to (A) ACUTE CARDIORESPIRATORY ARREST due to or as a consequence of (B) COMPRESSION OF THE NECK."

The City admits its officers applied a stranglehold on Ford, but claims they did not intend to use deadly force or to kill him (Exhibit 27, Response to Requests 176, 177 and 178).

4. EDWARD DAILY (aka) DAILEY

On October 6, 1976, Edward Daily was a 19-year-old black male.

The secret LAPD Robbery-Homicide Report of his death (Exhibit 9) shows that Daily's hands were handcuffed behind his back (Exhibit 9, p. 3). Los Angeles police officer M.J. Mendoza applied a bar arm control for "approximately ten seconds at which time Daily [in a police car] became passive and ceased struggling, appearing to be unconscious." (Exhibit 9, p. 5). Mendoza released the stranglehold, but Daily became combative again and Mendoza again applied a "bar arm" stranglehold for "approximately five seconds," whereupon Daily "again became passive and ceased struggling." Daily appeared to be unconscious. (Exhibit 9, p. 5). Mendoza then observed "saliva emitting from Daily's mouth and mucus from his nose." (Exhibit 9, pp. 5-6). Mendoza then released the stranglehold (Exhibit 9, p. 6). The officers then determined that Daily was not breathing and had no pulse (Exhibit 9, p. 6). Daily was transported to and pronounced dead at Daniel Freeman Hospital at 0030 Hours on October 6, 1976.

The Report of the Los Angeles County Medical Examiner-Coroner No. 76-12099 (Exhibit 8) states:

> "I performed an autopsy on the body of Edward D. Daily . . . on October 6, 1976 at 1000 Hours. From the anatomic findings and pertinent history I ascribe death to (A) ASPHYXIATION due to or as a consequence of (B) NECK RESTRAINING PROCEDURE FOR ABNORMAL BEHAVIOR ASSOCIATED WITH PHENCYCLIDINE USE."

Other significant conditions included aspiration of vomitus and "sickle cell disorder."

The City admits its officers applied a stranglehold on Daily but claims they did not intend to use deadly force or to kill him (Exhibit 27, Response to Requests 170, 171 and 172).

### 5. ALVIN WHITEHEAD

On February 1, 1978, Alvin Whitehead, was a 34-year-old black male.

The secret LAPD Robbery-Homicide Report of his death (Exhibit 11) shows that at or about 12:25 p.m. Whitehead was under the influence of PCP. He was standing with three Los Angeles police officers holding him. A fourth officer, J.A. Bennett applied a bar arm stranglehold for "approximately 15 to 20 seconds" when he heard a "snap" or "crack" from Whitehead's neck (Exhibit 11, p. 3). Whitehead did not lose consciousness. He was forced to the pavement, his hands were cuffed behind him and he was placed in a police car. He continued to struggle and kick and "was completely disoriented and irrational." The police car stopped and officer J.B. Jeffers put another bar-arm control on Whitehead's neck for 30 seconds but "was unable to render the suspect unconscious." (Exhibit 11, pp. 5-6).

Whitehead was driven to the 77th Street Police Station where his ankles were handcuffed. Then he was driven 6.1

miles to the main jail at Parker Center to be placed in a padded cell. (Exhibit 11, p. 6).

Upon arrival at the jail, Whitehead appeared "semi-conscious" with his breathing "very shallow." He was wheeled into a padded cell where the officers noted he had stopped breathing. A jail physician was called. He could not detect a pulse or heartbeat. Intensive CPR efforts for 12 minutes failed to revive Whitehead. He was pronounced dead at 1:20 p.m. (Exhibit 11, p. 7).

The Report of the Los Angeles County Medical Examiner-Coroner No. 78-01594 (Exhibit 10) states:

> "I performed an autopsy on the body of Alvin Whitehead . . . on February 2, 1978 at 1220 hours. From the anatomic findings and pertinent history I ascribe death to (A) FRACTURE, CERVICAL SPINE WITH CRUSH INJURY OF SPINAL CORD."

The anatomical findings of fresh injuries, in addition to the fractured spine, included extensive hemorrhages to the soft tissue of the neck. The fatal injury was the "transverse fracture of the intervertebral disc. Blood vessels of the larynx were "dilated, engorged with blood."

The City admits its officer applied a stranglehold to Whitehead but claims the officer did not intend to use deadly force or to kill him (Exhibit 27, Response to Requests 185, 186 and 187).

### 6. DAVID RANDALL ADKINS

On July 24, 1978, David Randall Adkins was a 39-year-old black male.

The secret LAPD Robbery-Homicide Report of his death (Exhibit 13) shows that two LAPD officers responded to a family dispute call at 12:40 a.m. at 1200 E. 45th Street, Los Angeles, CA. They had a brief, normal conversation with Adkins, then searched him for weapons. He had no

weapon. He said, "Me and my old lady just had an argument." Adkins volunteered to get his clothes and leave, but became verbally belligerent. Officer Glode grabbed Adkins' arm and said, "Come on, let's go." An altercation ensued. Officer C.H. Bennett attempted to apply a carotid control, then applied a bar arm control and another carotid control. Two other officers arrived, Bennett released the stranglehold and Adkins was handcuffed. The officers then heard "gurgling" sounds emanating from Adkins' mouth. He appeared to be breathing but was unconscious (Exhibit 13, p. 7).

The officers dragged Adkins' body out into the yard, saw an ambulance approaching and departed. The ambulance personnel found Adkins in full cardiac arrest at 12:56 a.m. Extensive CPR was unsuccessful and he was pronounced dead at 1:33 a.m. (Exhibit 13, p. 8).

The carotid stranglehold was applied "for a period of from one and one-half minutes to two minutes," during which time Adkins was not "rendered unconscious." (Exhibit 13, p. 8).

The Report of the Los Angeles County Medical Examiner-Coroner No. 78-9095 states:

> "I performed an autopsy on the body of David Adkins . . . on July 27, 1978 at 1000 hours. From the anatomic findings and pertinent history, I ascribe death to (A) ASPHYXIA due to or as a consequence of NECK COMPRESSION DURING RESTRAINING PROCEDURE."

The anatomical findings included extensive hemorrhage of the soft tissue around the neck organs.

The City admits its officer applied a stranglehold to Adkins but claims the officer did not intend to apply deadly force or to kill Adkins. (Exhibit 27, Response to Requests 161, 162 and 163).

## 7. ROBERT CAMERON

On December 20, 1979, Robert Cameron was a 32-year-old black male.

Exhibit 17 comprises records compiled and kept by the City relating to his death.

He was the passenger in a car stopped by Los Angeles police officers T.M. Brooks and J.M. Witowski for erratic and possibly intoxicated driving. The police claim Cameron tried to stab Brooks with a hair brush. Two more police officers joined Brooks in subduing Cameron. Witowski applied a carotid stranglehold to Cameron while on the ground, but did not render him unconscious. He was placed in a police car, but en route to the station, he stopped breathing. He was transported to a hospital where emergency treatment failed to revive him. He remained hospitalized in a comatose condition until his death January 7, 1980.

The Report of the Los Angeles County Medical Examiner-Coroner No. 80-0360 (Exhibit 16) states:

> "I performed an autopsy on the body of Robert Cameron . . . on January 9, 1980 at 1130 hours. From the anatomic findings and pertinent history I ascribe the death to (A) HYPOXIC ENCEPHALOPATHY (lack of oxygen to the brain) DUE TO RESPIRATORY ARREST FOLLOWING STRUGGLE WITH POLICE OFFICERS WHILE IN A STATE OF ACUTE ETHANOL AND COCAINE INTOXICATION."

The conclusion of acute ethanol and cocaine intoxication is questionable since the toxicological analysis is completely negative for ethanol, cocaine and all other drugs. The neuropathology report notes "possible swelling of the cervical spinal cord" as well as brain death.

The City admits that its officers attempted to apply a stranglehold on Cameron but claims they did not intend to apply deadly force or to kill him (Exhibit 27, Response to Requests 158, 159 and 160).

## 8. JAMES WRIGHT

On March 7, 1980, James Wright was a 41-year-old black male.

The secret LAPD Robbery Homicide Report of his death (Exhibit 46) shows that Los Angeles police officer Hans Staendner was working off-duty in plain civilian clothes that day as a security officer for the Roosevelt Hotel in Hollywood. At 5:20 p.m. Wright walked into the hotel lobby towards Staendner. Wright was "dirty, unshaven and disheveled;" Staendner thought he was a wandering transient. Staendner asked if he was a guest and Wright swung a fist which Staendner parried, grabbing Wright's arm. Wright grabbed the lapels of Staendner's jacket and a struggle ensued. Staendner applied a carotid stranglehold to Wright on the floor. Wright was kicking his feet and, to Staendner's perception, trying to get out of the hold. Wright arched his back several times and went limp. Staendner released the stranglehold which he had applied for two to three minutes.

Wright had no pulse or heartbeat; he failed to respond to CPR and was pronounced dead at 7:07 p.m.

The Report of the Los Angeles County Medical Examiner-Coroner No. 80-3230 (Exhibit 18) states:

> "I performed an autopsy on the body of James Wright . . . on March 11, 1980 at 1000 hours. From the anatomic findings and pertinent history I ascribe death to (A) ACUTE CARDIORESPIRATORY ARREST due to or as a consequence of (B) CAROTID CONTROL HOLD OF NECK."

Anatomic findings included fracture of the thyroid cartilage with hemorrhages. This was the only traumatic injury to the body.

The City admits (by failure to otherwise respond or object) that its officer applied the stranglehold without intending to apply deadly force or to kill Wright (Exhibit 27, Response to Requests 188, 189 and 190).

9. WESLEY ACREE*

On June 14, 1980, Wesley Acree was a 21-year-old white male.

The secret LAPD Robbery-Homicide Report (DR 80-593-210) of his arrest shows that Los Angeles police officer A.R. Barone "attempted to place his right arm around and across Acree's front neck area, and the suspect bent forward, north. The officer was unable to complete his control hold as the suspect's movement forced the officer rearward (south), breaking the attempted carotid hold."

Acree was then handcuffed and placed in a patrol car. Moments later, his pulse and breathing stopped. He failed to respond to emergency efforts, remained comatose and was pronounced dead June 14, 1980 at 0035 hours.

On June 16, 1980, Dr. Hideo Itabashi, Deputy Los Angeles County Medical Examiner performed an autopsy on Acree's body. He found, an arachnoid, [the delicate membrane covering the brain and spinal cord], diffuse, recent hemorrhage [bleeding], some of which was consistent with traumatic [rough contact] lumbar [lower back] puncture. There was extreme swelling of the brain. He ascribed the death to "anoxic [lack of oxygen] encephalomalacia [death

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*This stranglehold death occurred prior to the December 18, 1980 hearing on Lyons' motion for preliminary injunction but had not been discovered. Accordingly, this death was not considered by the district court in granting the preliminary injunction.

of brain tissue from sudden insufficiency of blood] due to or as a consequence of cardiac arrest during arrest procedure for violent behavior under the influence of phencyclidine [PCP]."

## 10. LARRY MORRIS

On June 17, 1980, Larry Morris was a 29-year-old black male.

The Preliminary Press Report released the next day by LAPD Robbery Homicide is Exhibit 21. It admits that sometime after 10:50 p.m. Los Angeles police officers "on several occasions unsuccessfully attempted to apply a carotid control," on Morris, whereupon he "appeared to be unconscio . ' CPR efforts failed and Morris died at the scene at 11:05 p.m.

Los Angeles County Medical Examiner-Coroner Report No. 80-7810 (Exhibit 20) states:

> "I performed an autopsy on the body of Larry Morris . . . on June 20, 1980 at 1050 hours. From the anatomic findings and pertinent history I ascribe death to (A) CARDIAC ARREST DURING PHYSICAL ALTERCATION due to or as a consequence of ARTERIOSCLEROTIC HEART DISEASE AND BLUNT FORCE INJURIES TO THE NECK AND SOFT TISSUES."

Anatomic findings included "injuries to the neck, neck organs, and cervical spine of recent origin and due to blunt force trauma (Linear ecchymosis [purplish patch caused by seepage of blood into skin], of the right anterior neck; fingernail abrasions; soft tissue injuries to the posterior, posterolateral and anterior neck; hemorrhages into the arteries and ligaments of the muscles and cervical spine, hemorrhages into both sternocleidomastoid muscles of the neck and of the thyroid). Robbery-Homicide reported to the Cor-

oner that Morris became "lethargic" after attempted application of the carotid hold, collapsing to the floor and vomiting large amounts of stomach contents. The Coroner notes that Morris terminally aspirated this vomitus.

*NOTE:* The following four deaths (Marshall, Hill, Cousins and McNeil) all have occurred since the district court's injunction issued December 23, 1980 and while the injunction has been stayed.

### 11. LUEL MARSHALL

On February 3, 1981, Luel Marshall was a 41-year-old black male.

The secret LAPD Robbery-Homicide Report (DR 81-305-438) of his arrest shows that, while Marshall was handcuffed, Los Angeles police officer Fiesler first strangled Marshall for "approximately five seconds" with a "right arm carotid hold." Fiesler later strangled Marshall for "approximately five to seven seconds" with a "right arm bar arm control." Then an unidentified Los Angeles County Sheriff's deputy allegedly applied a "right arm carotid hold" for "two or three seconds." Marshall was then driven to Los Angeles County-USC Medical Center where he was pronounced in "full cardiac arrest . . . [with a] condition listed as 'extremely serious' with a high likelihood of death." Marshall died without regaining consciousness on March 17, 1981.

On March 19, 1981, Joseph H. Choi, M.D., Deputy Medical Examiner at the Offices of the Chief Medical Examiner-Coroner for Los Angeles County performed an autopsy on the body of Marshall (Coroner's Case No. 81-3654). He ascribed death to "hypostatic (resulting from lying down) bronchopneumonia due to hypoxic (decreased oxygen) encephalopathy (suffering of the brain) following carotid hold to control drug influenced violent behavior."

Even though the neck area showed no injuries, microscopic studies of the brain showed severe damage due to loss of oxygen.

On February 3, 1981, Los Angeles County-USC Hospital analyzed Marshall's blood for evidence of alcohol, barbiturates or hypnotics: the results were negative. Analysis was also performed for heroin, Phenothiazine and Phencyclidine (PCP): the results were negative (OIS p. 16 ¶ 5). On March 25, 1981, the Coroner's office performed similar analysis for PCP with identical negative results.

## 12. CHARLES J. HILL

On March 14, 1981, Charles J. Hill was a 40-year-old black male.

The secret LAPD Robbery-Homicide Report (DR 81-488-642) of his arrest shows that at about 6:15 p.m. Los Angeles police officer Givliana "placed his right arm across Hill's neck . . .," and later that Los Angeles police officer Erwin "placed his right arm around [Hill's] neck . . . completing the bar arm control." At about 8:40 p.m., Hill was examined in jail "for vital signs with negative results" and was pronounced dead at 8:49 p.m.

On March 17, 1981, Deputy Los Angeles Medical Examiners (Coroner's Case No. 81-3518) performed an autopsy on Hill's body finding extensive abrasions of and hemorrhages in the neck, but ascribed death to "sickle cell crisis," to wit, the number of oxygen-carrying blood cells delivered to the brain were insufficient to sustain life. Toxicological analysis was negative for PCP, alcohol and all other drugs.

## 13. ROBERT COUSINS

On May 13, 1981, Robert Cousins was a 33-year-old white male.

The secret LAPD Robbery-Homicide report (DR 81-559-624) of his arrest shows that shortly after 6:08 a.m., May 12, 1981, Los Angeles police officer K.S. Melby, with four other officers present, "encircled the subject's neck with his left arm. He [Melby] grasped his left hand with his right hand and locked his fingers together. He positioned his left forearm adjacent to the left side of Cousins' neck. He began to apply pressure to the left side of Cousins' neck. He began to apply pressure to the carotid." (OIS Report, p. 9, ¶ 3).

Melby released the stranglehold. Los Angeles police officer W.R. Berndt then "placed his right arm around Cousins' neck, grasped his right hand in his left, and locked his fingers." He applied pressure "to Cousins' neck with his right arm . . . [and] Cousins slumped to the floor." (OIS Report, p. 10, ¶ 1-5). "Cousins stared 'wild-eyed,' gritted his teeth and momentarily stiffened his body. He suddenly relaxed and resistance appeared to subside. Officer Berndt released the pressure which he had maintained for approximately twenty seconds." (OIS Report, p. 11, ¶ 1-3). Cousins was then handcuffed and placed supine on the floor at about 6:17 a.m., whereupon two LAPD sergeants who had just arrived "noted a bluish discoloration of Cousins' face (cyanosis)" [lack of oxygenated blood]. It "appeared that Cousins was unconscious" and an ambulance was requested. Cardiopulmonary resuscitation was unsuccessfully initiated. An ambulance arrived at 6:46 a.m., found Cousins in full cardiac arrest, and transported him to Tarzana Medical Center where "he failed to respond to treatment" after being placed on a life-support system. He was pronounced dead the same day at 4:26 p.m. (OIS Report, p. 13, ¶ 1).

Police toxicological analysis of Cousins' blood and urine for drugs was negative (OIS Report p. 15, ¶ 9).

On May 14, 1981, a Deputy Los Angeles Medical Examiner performed an autopsy on Cousins' body (Coroner's

Case No. 81-6169). He found extensive hematoma in the deep neck muscles, soft tissue of the neck, left carotid sheath, esophagus, and pharynx. He also found that Cousins' hyoid bone had been broken, which is evidence of manual strangulation. He ascribed death to "hypoxic encephalopathy" (acute lack of oxygen to the brain). Extensive toxicological analysis was negative for PCP, alcohol and all other drugs.

14. ARTHUR W. McNEIL

On July 28, 1981, Arthur W. McNeil was a 30-year-old black male.

The secret LAPD Robbery-Homicide Report (DR 81-651-760) of his arrest shows that Los Angeles police officer T.C. Neel applied a "modified carotid hold" and "a full carotid hold" on McNeil for a total of fifteen seconds at about 4:30 a.m. A few minutes later, after McNeil was handcuffed, Los Angeles police officer G.J. Krejci applied a carotid hold for "eight or ten seconds." McNeil was transported to jail. He went into cardiac arrest. Resuscitation efforts failed and he was pronounced dead at 6:18 a.m.

On July 29, 1981, Deputy Los Angeles County Medical Examiner Irwin L. Golden (Coroner's Case No. 81-9666) performed an autopsy on McNeil's body. Dr. Golden found extensive outer bruising and deep hemorrhages in the neck muscles, thyroid gland and cartilage pharyngeal wall as well as a fracture of the thyroid cartilage. He ascribed the death to "SUDDEN DEATH FOLLOWING ALTERCATION WITH BLUNT FORCE TRAUMA TO THE NECK."

## APPENDIX B.

### Second Amended Complaint for Damages; Civil Rights; Preliminary and Permanent Injunction; Declaratory Relief; Demand for Jury Trial

United States District Court, Central District of California.

Adolph Lyons, Plaintiff, vs. City of Los Angeles, Robert J. Crupi, Daniel Hills, Scott Landsman and Harold Gaines, Defendants. CASE NO. 77-0420-RMT.

Plaintiff alleges the following upon information and belief, except paragraphs 8, 9, 21 and 26, which are alleged upon knowledge.

COUNT I
AGAINST DEFENDANTS ROBERT J. CRUPI, DANIEL HILLS, SCOTT LANDSMAN AND HAROLD GAINES ONLY

1. This action arises under Title 42 of the U.S. Code Sections 1983, 1985 and 1986 and the United States Constitution.

2. The jurisdiction of this court is based upon Title 28, U.S. Code Sections 1331 and 1343 of the U.S. Constitution.

3. This is a civil action wherein the matter in controversy exceeds the sum and value of $10,000.00, exclusive of interest and costs.

4. At all times herein mentioned, Plaintiffs and Defendants were and now are citizens of the United States and residents of the County of Los Angeles, State of California.

5. At all times herein mentioned, Defendants Robert J. Crupi, Daniel Hills, Scott Landsman and Harold Gaines (sometimes referred to hereafter as "Defendant Officers") were, and now are, duly appointed police officers of the

Los Angeles Police Department and employees of the City of Los Angeles.

6. At all times herein mentioned Defendants were acting or pretending to act under color of one or more statutes, regulations, customs or usages of the State of California.

7. On or about October 6, 1976, at about 2:00 a.m. Defendant Officers were working in the course and scope of their employment in the City of Los Angeles.

8. At or about that same time at or near the intersection of Eleventh Avenue and Fifty-Fourth Street, said Defendant Officers, without provocation, legal justification or excuse, and by use of excessive force and negligent employment of known dangerous techniques did seize, assault, batter and, while he was handcuffed, choke and strangle Plaintiff, a black male person, into unconsciousness.

9. As a direct consequence of the acts above complained of, Plaintiff suffered severe pain, anguish, fear for his life and permanent physical injuries, all to his damage in an amount in excess of $10,000.00 but otherwise presently undetermined. When such amount is determined, Plaintiff will ask leave to amend this complaint to insert said amounts at this point.

10. Because of the above recited acts, Plaintiff was subjected to the deprivation by Defendant Officers under color of law and of statutes, ordinances, regulations, custom and usage of the State of California, of rights, privileges, and immunities secured to him by the Constitution and laws of the United States and particularly (a) his right to be secure in his person against unreasonable seizure; (b) his right to be free from infliction of cruel and unusual punishment guaranteed by the Eighth Amendment to said Constitution; and (c) his right not to be deprived of life, liberty or property without due process of law guaranteed by the Fifth and

Fourteenth Amendments to said Constitution and (d) his right, as a black resident of Los Angeles to equal protection of the law.

11. Defendants herein acted wilfully, maliciously, intentionally, oppressively and in reckless disregard of the possible results of their conduct, and accordingly, Plaintiff is entitled to punitive and exemplary damages for the sake of example and by way of punishing Defendants in the amount of $1,000,000.00.

12. Defendants herein and their attorneys have consistently failed and refused to respond to Plaintiff's inquiries regarding this matter, have acted in bad faith, vexatiously and for oppressive reasons and accordingly, Plaintiff is entitled to an award of reasonable attorneys fees.

## COUNT II
## AGAINST DEFENDANT CITY OF LOS ANGELES FOR VIOLATION OF CONSTITUTIONALLY PROTECTED RIGHTS

Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint, excepting paragraph 10, and incorporates them herein by reference.

13. At all times herein mentioned, the Defendant Officers were employees and agents of the Defendant City of Los Angeles, acting within the scope and course of aforesaid employment, and by virtue of that relationship, Defendant City is liable for the acts of said Defendant Officers. The Defendant Officers were carrying out the official policies, customs and practices of the Los Angeles Police Department and the City of Los Angeles, and by virtue thereof, defendant City is liable for the actions.

14. Because of the above recited acts, Plaintiff was deprived by Defendant City of rights, privileges, and im-

munities secured to him by the Constitution of the U.S. and particularly:

(a) his right to be secure in his person against unreasonable seizure guaranteed by the Fourth Amendment to said Constitution.

(b) his right to freedom from infliction of cruel and unusual punishment guaranteed by the Eighth Amendment to said Constitution.

(c) his right not to be deprived of life, liberty or property without due process of law guaranteed by the Fifth and Fourteenth Amendments to said Constitution and

(d) his right as a black resident of Los Angeles to equal protection of the law.

COUNT III

Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint, excepting paragraph 10, and incorporates them herein by reference.

15. By virtue of the foregoing, two or more of the Defendants, whose names are presently unknown to Plaintiffs, conspired for the purpose of depriving, directly and indirectly, Plaintiff of the equal protection of the laws and of equal privileges and immunities under the law. One or more of such Defendants engaged in such conspiracy did or caused to be done, acts in furtherance of the object of the conspiracy, whereby Plaintiff was injured in his person and property and was deprived of having and exercising rights and privileges of citizens of the United States.

16. When the true names of the Defendants above responsible become known to Plaintiff, Plaintiff will ask leave of court to amend this complaint to insert their true names.

## COUNT IV

Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint, excepting paragraphs 10 and 15, and incorporates them herein by reference.

17. By virtue of the foregoing, certain of the Defendants whose names are presently unknown to Plaintiff had knowledge of the wrongs conspired to be done and that they were about to be committed. Said Defendants then had power to prevent or aid in preventing the commission of same but neglected or refused so to do. Said Defendants by reasonable diligence could have prevented the damages caused by the foregoing wrongful acts which resulted in the injuries to Plaintiff.

## COUNT V
## FOR PRELIMINARY AND PERMANENT INJUNCTION AGAINST DEFENDANT CITY OF LOS ANGELES AGAINST USE OF CONTROLS RESULTING IN DEPRIVATION OF CIVIL RIGHTS

Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint, excepting paragraphs 10 and 15, and incorporates them herein by reference.

18. The "Bar Arm Control" is a means of either physical defense or offense which is applied by a right handed man as follows: You stand behind your victim. Place your right arm around his neck, positioning your forearm directly in front of and against the victim's adams apple. Grasp your right fist with your left hand and pull backwards with your right forearm and left hand. This hold is designed to cut-off the victim's air supply and to render him unconscious.

19. The "Carotid Artery Control" is a means of either physical defense or offense which is applied by a right handed man as follows: You stand behind your victim. Place your right arm around his neck positioning the inside of

your right elbow directly in front of and against the victim's adam's apple. Grasp your right fist with your left hand, press your right fist inward towards the victim's neck and tighten and close your right arm. This hold is designed to cut-off the victim's blood supply to his brain and to render him unconscious.

20. Defendant City of Los Angeles has in the past and now does authorize, train and encourage its police officers to employ so-called "carotid artery" and "bar arm" controls in situations where they are threatened by far less than deadly force.

21. On or about October 6, 1976 at about 2:00 a.m., Plaintiff was stopped by the Defendant Officers for a mere traffic or vehicle code violation. Plaintiff offered no resistance or threat whatsoever, but without any provocation or justification, one or more of said officers seized Plaintiff, applied one or both of the foregoing controls, choking and strangling Plaintiff into unconsciousness, causing him to fear for his life, and causing severe damage to Plaintiff's larynx.

22. Plaintiff is informed and believes and on such ground alleges that the Defendant officers, pursuant to the authorization, instruction and encouragement of Defendant City of Los Angeles, regularly and routinely apply these choke holds in innumerable situations where they are not threatened by the use of any deadly force whatsoever.

23. Plaintiff is informed and believes and on such ground alleges that within five years last past, the application of such choke holds by Los Angeles police officers, in situations involving threats of less than deadly force, has resulted in severe and permanent injuries to numerous persons and death to many others, and particularly and discriminatorily the stranglehold s are applied to black males.

Plaintiff is a black male, age 28, born November 3, 1951. Plaintiff is informed and believes and on such grounds alleges that since at least May, 1975, the application of such strangleholds by Los Angeles City officers has resulted in at least ten deaths as follows:

| | |
|---|---|
| May 27, 1975 | Carl Middleton, 25-year-old black male |
| August 10, 1975 | Frank Fairbanks, 21-year-old Caucasian male; |
| Nov. 4, 1975 | Booker T. Ford, Jr., 28-year-old black male; |
| Oct. 6, 1976 | Edward Dailey, 19-year-old black male; |
| July 24, 1978 | David Adkins, 39-year-old black male; |
| Feb. 1, 1978 | Alvin Whitehead, 34-year-old black male; |
| Sep. 1, 1979 | Chadwick Turk, 30-year-old black male; |
| Jan. 7, 1980 | Robert Cameron, 32-year-old Caucasian male; |
| Mar. 7, 1980 | James Wright, 41-year-old black male; |
| June 17, 1980 | Larry Morris, 29-year-old black male; |

Eight of the ten people strangled to death were black (80%) and two were white (20%). During this time period, the population of the City of Los Angeles was approximately 18% black. Blacks accounted for 36% of total arrests, 46% of arrests for serious felones (murder, forcible rape, robbery, and aggrevated assault), and 44% of unarmed attacks on police officers.

24. Plaintiff is informed and believes and on such ground alleges that application of the Bar Arm Control and

Carotid Artery Control constitutes the use of deadly force and threatens the victim thereof with immediate severe bodily harm and death and further constitutes a denial of equal protection of the law and due process to black males of Los Angeles.

25. Defendant City, by authorizing, instructing and encouraging the use of the foregoing holds, when less than deadly force is threatened, is illegally threatening to deprive Plaintiff and others similarly situated, under color of law and of statutes, ordinances, regulations, customs and usages of the State of California and City of Los Angeles;

(a) their right to be secure in their persons against unreasonable seizure;

(b) their right to be free from infliction of cruel and unusual punishment;

(c) their right not to be deprived of life, liberty or property without due process of law; and

(d) their rights, as black residents of Los Angeles to equal protection of the law, all as guaranteed and secured to them by the Constitution and laws of the United States.

26. The illegal actions of Defendant City of Los Angeles have caused Plaintiff to suffer irreparable injury and threaten to cause Plaintiff and others similarly situated, irreparable injury, to wit, permanent physical injury and loss of life. Plaintiff justifiably fears that any contact he has with Los Angeles police officers may result in his being choked and strangled to death without provocation, justification or other legal excuse.

26A. Plaintiff brings this Count V and the following Count VI as a class action on behalf of himself and all other persons threatened with application of a bar arm control or carotid artery control when they do not threaten to inflict serious bodily harm. The class is so numerous that joinder

of all members is impracticable, there are questions of law and fact common to the class, the claims of plaintiff are typical of the claims of the class and plaintiff will fairly and adequately protect the interests of the class.

26B. Prosecution of separate actions by individual members of the class would create a risk of:

(i) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for defendants; and

(ii) adjudications with respect to individual members of the class which would, as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair their ability to protect their interests.

26C. Defendant City has acted and refused to act in connection with training, instruction, authorization and application of strangleholds on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

27. Unless this Court grants the relief requested, there exists no other adequate remedy at law or otherwise to protect Plaintiff, and others similarly situated, from the threatened irreparable injury.

28. No injury could result on the City of Los Angeles or its officers through the Court's restraining and enjoining the illegal actions aforesaid.

## COUNT VI
## DECLARATORY RELIEF

Plaintiff restates and reiterates all of the foregoing paragraphs of this complaint, excepting paragraphs 10 and 15, and incorporates them herein by reference.

29. This is a claim for declaratory judgment pursuant to 28 U.S.C. §2201 for the purpose of determining an actual, justiciable controversy that exists between Plaintiff and Defendant City of Los Angeles as appears hereinafter.

30. Plaintiff claims and Defendant City of Los Angeles, upon information and belief, denies that the use under color of law of either the Bar Arm Control or the Carotid Artery Control, absent the threat of immediate use of deadly force, is a *per se* violation of the following Constitutional rights:

(a) the right to be secure in one's person against unreasonable seizure;

(b) the right to be free from infliction of cruel and unusual punishment;

(c) the right not to be deprived of life, liberty or property without due process of law;

(d) their rights, as black residents of Los Angeles, to equal protection of the law,

all as guaranteed and secured to them by the Constitution and laws of the United States.

31. Plaintiff is entitled to a speedy hearing of this Count VI and is entitled to have it advanced on a calendar for hearing.

WHEREFORE, Plaintiff prays for relief from Defendants, and each of them, jointly and severally, as follows:

COUNTS I THROUGH IV

1. The sum of One Million Dollars ($1,000,000.00) in general damages.
2. The sum of One Million Dollars ($1,000,000.00) in punitive and exemplary damages.
3. Costs of suit and reasonable attorneys fees.
4. Such other and further relief as the Court deems just and proper.

COUNT V

1. That Defendant City of Los Angeles and its officers, agents, representatives and employees be restrained and enjoined pendente lite and permanently from
   (a) authorizing, instructing, encouraging the use of or applying the Bar Arm Control,
   (b) authorizing, instructing, encouraging or applying the Carotid Artery Control,

   except in situations where the proposed victim of said control reasonably appears to be threatening the immediate use of deadly force.
2. Costs of suit and reasonable attorneys' fees.
3. Such other and further relief as the Court deems just and proper.

COUNT VI

1. To adjudge order and decree that the use under color of law of either the Bar Arm Control or the Carotid Artery Control, absent the threat of immediate use of deadly force, is a *per se* violation of the following Constitutional rights:
   (a) the right to be secure in one's person against unreasonable seizure;
   (b) the right to be free from infliction of cruel and unusual punishment;
   (c) the right not to be deprived of life, liberty or property without due process of law;
   (d) the rights of black residents of Los Angeles to equal protection of the law;

   all as guaranteed and secured to them by the Constitution and laws of the United States.

2. Costs of suit and reasonable attorney's fees;
3. Such other and further relief as the Court deems just and proper.

/s/ MICHAEL R. MITCHELL
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff herein demands trial by jury of all issues of fact properly triable thereby.

/s/ MICHAEL R. MITCHELL,
Attorney for Plaintiff

## APPENDIX C

### Order Staying Plaintiff's Motion for Class Certification and Motion for Summary Judgment

United States District Court, Central District of California.

Adolph Lyons, Plaintiff, vs. The City of Los Angeles, et al., Defendants. No. CV 77-420-RMT.

Filed March 17, 1981.

Plaintiff having filed a Motion for Class Certification and a Motion for Summary Judgment on February 27, 1981 and March 9, 1981, respectively, both set for hearing on March 30, 1981, and this court having taken into consideration the pending appeal of its Preliminary Injunction Order,

IT IS ORDERED that plaintiff's motions be stayed pending the appeal of this court's Preliminary Injunction Order.

Dated: MAR 17, 1981.

/s/ ROBERT M. TAKASUGI
United States District Judge

## APPENDIX D

### Findings of Fact and Conclusions of Law

On or about October 6, 1976, plaintiff Adolph Lyons, a black male, was detained by officers of the Los Angeles Police Department ("Department") for a traffic infraction.

II

During the course of this confrontation, said officers without provocation or legal justification, applied a Department-authorized chokehold which resulted in injuries to plaintiff. Plaintiff initiated this action under 42 U.S.C. § 1983, claiming the violation of his civil and constitutional rights.

III

The chokeholds involve the bar arm (trachea) hold and the carotid artery hold — both of which are applied as methods of controlling the subject. The effect of the bar arm hold is to suppress the trachea thereby constricting the flow of oxygen to the lungs. The carotid artery hold is designed to impede the flow of blood to the brain by applying physical force upon the carotid artery.

IV

The officers of the Department are given at most two hours instruction on the use of each of these control holds during their training at the Department's police academy. The present training program is totally inadequate when weighed against the potential danger resulting from the employment of the holds in question as hereinafter described.

V

The City of Los Angeles and the Department authorize the use of these holds under circumstances where no one is threatened by death or grievous bodily harm. Plaintiff

seeks relief from this court to restrict the use of such holds only in situations where an individual is threatened by death or serious bodily harm.

VI

The City of Los Angeles and the Department do not now have regulations which mandate a written report of the use of such force unless death results from the application thereof.

VII

The use of the bar arm and the carotid artery holds engender a high risk of irreparable injury or death as presently used and under the present training methods offered by the Department.

VIII

There is a substantially greater likelihood that the implementation of these holds on persons with pre-existing respiratory or circulatory ailments or on persons under the influence of mind-altering drugs or medication will result in irreparable conditions far beyond the contemplation of permissible police conduct.

IX

In the instance where the subject holds are instituted, there may be a natural tendency of such victim to physically react by instinct or reflex. This almost inevitable reaction may be interpreted by the officer as one suggesting resistance or aggression, thereby prompting the officer either to increase the force or duration of its application or resort to both such counter measures.

X

In the case of the bar arm hold, a slight increase of the force may be sufficient to crush the victim's trachea, thereby leading to fatal consequences within a matter of seconds or minutes. In relation to the carotid artery hold, a slight increase in the duration of the force could result in cardiac arrest which could then lead to similar fatal consequences.

XI

In the past five (5) years, following the employment of the subject holds by officers of the Department, at least nine (9) persons met such fatalities. There is a high likelihood that these fatalities were caused by misapplication of the subject holds.

XII

Given the high risk of injury or death from the misapplication of the control holds, and the inadequate training and instructions presently provided, the carotid artery and the bar arm holds constitute deadly force. Their continued use in situations where death or serious bodily harm is not threatened is unconscionable in a civilized society.

Any finding of fact which may be deemed a conclusion of law is incorporated into the Conclusions of Law section below, and any conclusion of law which may be deemed a finding of fact is incorporated into the Findings of Fact section above.

CONCLUSIONS OF LAW

I

Jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1343.

II

In order to issue a preliminary injunction, three factors must be successfully met:

1. [H]ave the movants established a strong likelihood of success on the merits;

2. Does the balance of irreparable harm favor the movants; and

3. Does the public interest favor granting the injunction? *Sierra Club v. Hathaway*, 579 F.2d 1162, 1167 (9th Cir. 1978).

III

The movants have established a strong likelihood of success on the merits.

IV

The balance of irreparable harm tips decidedly in favor of the movant.

V

The public interest is clearly in favor of granting a preliminary injunction.

VI

Unless this court grants this preliminary injunction, there exists no adequate remedy at law.

VII

The continued use of the bar arm and carotid artery holds as presently taught by the Los Angeles Police Department, upon persons who do not threaten serious bodily harm or deadly force, constitutes a violation of the Fourteenth

Amendment due process clause, substantive due process, and shocks the conscience of the court.

Date: December 23, 1980.

/s/ Robert M. Takasugi
United States District Judge

## APPENDIX E

### Preliminary Injunction Order

This matter having come before this court for hearing on December 18, 1980, and the court having considered the pleadings and other documents filed herein and argument of counsel, and the court having filed its Findings of Fact and Conclusions of Law,

IT IS ORDERED that defendants are hereby enjoined from the use of both the carotid artery and bar arm holds under circumstances which do not threaten death or serious bodily harm.

IT IS FURTHER ORDERED that this injunction is effective 4:30 p.m., December 29, 1980 and shall continue in force until this court approves a training program presented to it. Such program shall consist of a detailed written training manual, prepared by qualified individuals, in addition to appropriate, practical training sessions for the members of the Los Angeles Police Department.

IT IS FURTHER ORDERED that defendant City of Los Angeles establish a requirement, forthwith, that all applications of the use of the holds in question, even under the conditions permitted by this Order, to wit, the death or serious bodily harm situation, be reported in writing to said defendant within forty-eight hours after the use of such holds.

IT IS FURTHER ORDERED that defendant City of Los Angeles shall maintain records of such reports in an orderly fashion, and shall allow this court ready access to such records upon twenty-four hours' notice.

Date: December 23, 1980.

/s/ Robert M. Takasugi,
United States District Judge

# Supplemental Opposition

Office - Supreme Court, U.S.
FILED
JUN 1 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-1064

IN THE

SUPREME COURT OF THE UNITED STATES

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October Term, 1981

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THE CITY OF LOS ANGELES,

Petitioner,

vs.

ADOLPH LYONS,

Respondent.

---

MOTION TO DISMISS WRIT OF CERTIORARI

AS IMPROVIDENTLY GRANTED

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## TABLE OF AUTHORITIES

### Cases


| | Page |
|---|---|
| American Construction Co. v. Jacksonville T&K.R.Co 148 U.S. 372, 37 L.Ed.486 (1893) | 2 |
| Board of Education, etc. v. Taylor 82 S.Ct. 10 (1961) | 2 |

No. 81-1064

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Respondent.

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MOTION TO DISMISS WRIT OF CERTIORARI

AS IMPROVIDENTLY GRANTED

---

Respondent Adolph Lyons respectfully moves this Court to dismiss its writ of certiorari as improvidently granted because of changed circumstances.

On December 24, 1980, ten people had died from Los Angeles Police Department ("LAPD") stranglehold and respondent was almost the eleventh death. On that date, respondent obtained a preliminary injunction from the district court which, inter alia, prohibited the petitioner City of Los Angeles' ("City") police officers from using strangleholds (the carotid control and the bar arm control) "under circumstances which do not threaten death or serious bodily harm." The City was ordered to make written reports of stranglehold use and to give the district court access to the reports. The preliminary injunction was to expire when the court approved a proper training program. Petition for Certiorari, Appendix D.

The injunction has never gone into effect by virtue of various stay orders, including this Court's stay of September 29, 1981, ___ U.S. ___, 69 L.Ed.2d 1015, 102 S.Ct. 14. While the injunction has been stayed, five more stranglehold deaths have occurred (four black males and one white male). The most recent occurred April 5, 1982 when James T. Mincey, Jr., a 20-year-old black male, died incident to a traffic stop.

Certiorari was granted February 22, 1982 to determine (a) whether respondent had standing to obtain the preliminary injunction, and (b) whether the injunction improperly was a substantial interference in the operation of a municipal police department. Petitioner's Brief at p. i.

Central to both of these questions is the actual police stranglehold policy. Subsequent to the grant of certiorari, this policy has changed substantially. On May 6, 1982, the Los Angeles police chief totally banned use of the "bar arm control." On May 12, 1982, the Los Angeles Board of Police Commissioners ("Board") imposed a six-month moratorium on all strangleholds unless death or serious bodily injury are threatened. The Board has also ordered that written reports are kept of all stranglehold applications.

Because of these changes, this interlocutory case is no longer the proper vehicle for considering the questions presented.

This Court does not normally review non-final judgments "unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause." American Construction Co. v. Jacksonville, T&K.R.Co., 148 U.S. 372, 37 L.Ed. 486 (1893). Nor does the Court normally grant stays of interlocutory orders absent an extraordinary showing of threatened irreparable injury. Board of Education, etc. v. Taylor, 82 S.Ct. 10 (1961). Presumably, the Court in granting certiorari, heeded the City's

plea that the injunction "represents a substantial displacement of municipal authority" (Petition, p. 20), that to comply would require expensive retraining of officers (Petition, 20-21), and would create "a significant void in LAPD use-of-force policy" (Petition, p. 22) leading to "greater frequency of severity of injuries" (Petition, p. 23). These pleas are no longer valid. The City has changed its stranglehold policy, retrained its officers, filled the void, and apparently satisfied itself that more severe injuries will not occur.

Thus, whatever irreparable injury, inconvenience or embarrassment the City might have suffered when certiorari was granted, none would be suffered now upon dissolving the stay and remanding for trial as not ripe for review. The interlocutory record now before the Court bears little resemblance to reality because of City policy changes.

Similarly, the issue of respondent's standing to obtain the injunction has been muddled. In 1977, when respondent brought the action, his standing arose from his almost dying of a stranglehold coupled with his knowledge of police policy, stranglehold dangers and two black male deaths (Joint Appendix, p. 10) leading to real, justifiable and continuing fear that he would die. Thereafter, with chillingly regularity, respondent learned of thirteen more deaths, primarily of black males. Now the City purports to have dramatically changed its stranglehold policy to reduce the threat to respondent and others. Thus, the issue of respondent's standing has been complicated by new factual developments not contained in the record before this Court.

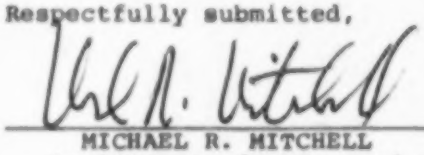
On remand, the City would be free to present new facts and to move the district court to re-examine respondent's standing, and to dissolve or modify the preliminary injunction. Class certification will be clearly ruled upon and, if settlement does

not ensue, trial will occur and a full record will be created. Only then will this case, properly framed, be ripe for review.

The City now lacks standing to request this Court to render an advisory opinion about (a) whether in 1977 respondent had standing to challenge a policy now disavowed by the City, and (b) whether the injunction would have interferred with a municipal policy if that policy had not changed.

For these reasons, respondent moves the Court to dismiss its writ of certiorari and remand for trial.

Respectfully submitted,



MICHAEL R. MITCHELL
An Attorney for Respondent

Of Counsel: Dennis E. Curtis, William Genego, Joel Gora, Judith Resnik, Charles Sims, and Terry Smerling

## CERTIFICATE OF SERVICE

I, MICHAEL R. MITCHELL, the undersigned, certify:

1. I am a member of the Bar of this Court and representing the respondent herein.

2. Pursuant to Rule 28 of the Rules of the Supreme Court of the United States, I caused a copy of the within Motion to Dismiss Writ of Certiorari as Improvidently Granted to be mailed on May 28, 1982, by depositing such document in a United States post office or mailbox, with first-class postage prepaid, addressed to petitioner's counsel, as follows:

IRA REINER, City Attorney
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Assistant City Attorney
LEWIS N. UNGER, Deputy City Attorney
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3. I have also personally served LEWIS N. UNGER in my office at 5850 Canoga Avenue, 4th Floor, Woodland Hills, California, 91367, at 5:00 p.m., on May 28, 1982.

4. All parties required to be served have been served.

DATED: May 28, 1982.

MICHAEL R. MITCHELL

# Petitioner's Reply Brief

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No. 81-1064
IN THE

# Supreme Court of the United States

October Term, 1981

THE CITY OF LOS ANGELES,

*Petitioner*

*v.*

ADOLPH LYONS,

*Respondent*

## PETITIONER'S REPLY BRIEF

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TABLE OF CONTENTS

Page

I.

The Issues Are Ripe for Review ..... 1

II.

Discriminatory Application of the Control Holds Is Not in Issue and Is Not Established ..... 3

III.

The Preliminary Injunction Is Not Predicated on a Determination That the Control Holds Are Automatically Applied Upon Persons Stopped by LAPD Officers ..... 5

IV.

The Respondent Misstates the Record ..... 6

Conclusion ..... 9

## TABLE OF AUTHORITIES


| Cases | Page |
|---|---|
| Allee v. Medrano, 416 U.S. 802 (1974) | 2 |
| Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252 (1977) | 4 |
| Bailey v. Patterson, 369 U.S. 31 (1962) | 2 |
| East Texas Motor Freight v. Rodriguez, 431 U.S. 395 (1977) | 2 |
| Flast v. Cohen, 392 U.S. 83 (1968) | 5 |
| Linda R.S. v. Richard D., 410 U.S. 614 (1973) | 5 |
| Lyons v. City of Los Angeles, 656 F.2d 417 (9th Cir. 1981) mandate stayed pend. cert., — U.S. — , 102 S.Ct. 14, 69 L.Ed.2d 1015 (1981) | 3, 4 |
| O'Shea v. Littleton, 414 U.S. 488 (1974) | 1 |
| People v. Trevino, 72 Cal.App.3d 686, 140 Cal.Rptr. 243 (1977) | 9 |
| Teamsters v. United States, 431 U.S. 324 (1977) | 4 |
| Washington v. Davis, 426 U.S. 229 (1976) | 4 |
| **Rules** | |
| Federal Rules of Civil Procedure, Rule 23(a) | 2 |
| United States Supreme Court Rules, Rule 22.2 | 6 |

No. 81-1064

IN THE

# Supreme Court of the United States

October Term, 1981

THE CITY OF LOS ANGELES,

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ADOLPH LYONS,

*Respondent*

## PETITIONER'S REPLY BRIEF

### I.
### The Issues Are Ripe for Review

The respondent asserts that the issues before the Court are not ripe for review because class certification and trial on the merits have not yet occurred. Br. in Opp. 29-30. There is no merit to this contention.

The standing issue addresses whether the federal courts have subject matter jurisdiction over this case. Standing problems, therefore, should be resolved as early as possible in litigation to minimize the waste of judicial and litigant resources.

Moreover, the respondent's standing would not be affected by class certification proceedings. In *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974), the Court held that if a putative class representative fails to establish the requisite case or controversy with the defendant, he may not "seek relief on behalf of himself or any other member of the class." (Footnote omitted.) The decision in *O'Shea* required

dismissal of the action for want of standing prior to class certification. Nor can the putative class representative derive standing from other putative class members. Chief Justice Burger has stated:

> "In particular, a named plaintiff cannot acquire standing to sue by bringing his action on behalf of others who suffered injury which would have afforded them standing had they been named plaintiffs; it bears repeating that a person cannot predicate standing on injury which he does not share. *Standing cannot be acquired through the back door of a class action.*"

*Allee v. Medrano*, 416 U.S. 802, 828-829 (1974) (concurring and dissenting opinion) (Emphasis added).

The typicality requirement of F.R. Civ. P. 23(a) raises an issue distinct from standing. The inquiry turns from whether the putative class representative has been injured (or is threatened with injury) to whether he or she is "part of the class" and possesses the same interest and suffers the same injury (or threat) as the putative class members. *East Texas Motor Freight v. Rodriguez*, 431 U.S. 395, 403 (1977); see *Bailey v. Patterson*, 369 U.S. 31, 32-33 (1962). Hence, if the respondent does not have standing, there is no need to consider whether his circumstance typifies those he would represent.

The federalism issue is ripe for review despite the temporary nature of the preliminary injunction issued by the district court. The preliminary injunction will have a profound impact upon Los Angeles Police Department ("LAPD") operations should it go into effect. As discussed at length in the petition, LAPD officers will be required to use significantly higher levels of force to subdue combative suspects (see Pet. 21-23), and massive retraining of the LAPD's 6500 officers will be required should proceedings continue. See Pet. 20-21, 23. While temporary in its duration, this preliminary injunction is thus tantamount in its effect to a permanent injunction.

The factual record at this stage in the litigation suffices for purposes of this proceeding. The question of whether the control holds pass constitutional muster is not before this Court.[1] If it were, the record would be inadequate for the purpose.[2] The record is nonetheless substantial[3] and sufficient to demonstrate that the court of appeals in *Lyons II*[4] did not fully appreciate the extent to which the preliminary injunction constitutes a major federal judicial intrusion into the operation of a municipal police department.

## II.

## Discriminatory Application of the Control Holds Is Not in Issue and Is Not Established

The respondent argues that the LAPD's use of the control holds violates the Equal Protection Clause in that the holds are disporportionately applied to black males. Br. in Opp. 2, 20, 21, 22, 28. The respondent unsuccessfully made the same argument before the district court. The issue was pursued by the respondent on cross-appeal in the court of appeals, and that court correctly found that "[b]ecause none of the questions on the cross-appeal arises from an appealable order or judgment over which we have jurisdiction, 28 U.S.C. § 1291, we express no opinion on them." 656 F.2d

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[1]The respondent rightly notes that no testimony was taken at the preliminary injunction hearing. Indeed, the holds have yet to be demonstrated before the district court. The district court requested that all evidence at the preliminary injunction hearing be presented on paper.

[2]Two major gaps exist in the factual record. First, the evidence adduced relative to fatalities allegedly resulting from use of the control holds is, with one exception, derived entirely from LAPD and Los Angeles County coroner records. Depositions of the persons who prepared these records have yet to be taken. Second, the bulk of the testimony that would be presented at trial would be opinion testimony from experts in medicine, police science, and the martial arts. The trier of fact should see and hear such testimony.

[3]The record on appeal includes 16 affidavits or declarations, 15 deposition transcripts, and 33 government records.

[4]*Lyons v. City of Los Angeles*, 656 F.2d 417 (9th Cir. 1981) (per curiam), *mandate stayed pend. cert.*, ___ U.S. ___, 102 S.Ct. 14, 69 L.Ed.2d 1015 (1981).

417, 418 (9th Cir. 1981). Pet. App. 30a. Apparently, the respondent is now attempting to raise this issue in this Court without filing a cross-petition for certiorari.

The single fact supportive of the respondent's claim before the district court was that seven of the nine persons who died after application of a control hold were black males. The respondent contended that this fact, standing alone, required the district court to conclude that the LAPD denies black males equal protection of the laws.

This argument ignores this Court's holding that a law or other official act does not violate the Constitution *solely* because it has a racially disproportionate impact. *Washington v. Davis*, 426 U.S. 229, 239, 242 (1976). "Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause." *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 265 (1977). There is no evidence in the instant case even suggesting that the LAPD intends to treat blacks differently from other racial or ethnic groups in the application of the control holds.

Statistical disparity may be probative of the existence of a racially discriminatory purpose. However, the "usefulness" of statistics like any other evidence "depends on all of the surrounding facts and circumstances." *Teamsters v. United States*, 431 U.S. 324, 340 (1977). The respondent fails to mention that evidence in the record shows that the higher incidence of deaths to black males perhaps can be explained by the fact that in the City black males are, in comparison to their representation in the City population, more frequently arrested for violent crimes and are more frequently involved in attacks on police officers. Ex. 22.[5]

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[5]Also, the LAPD recently selected at random a sample (93) of reported altercations in which the holds were used during a 4½ month period (438). While other police data indicated that from 1976-1980 blacks were involved in 38.6% of aggravated assaults on police officers, the sample indicated that 35.5% of the control hold incidents involved blacks. By comparison, whites were involved in 26.9% of the aggravated assaults but in 37.6% of the control hold incidents. *Report on Upper Body Control Holds* 16 (October 6, 1981).

Therefore, the respondent's equal protection claim is not properly before the Court and is not factually supported.

## III.

## The Preliminary Injunction Is Not Predicated on a Determination That the Control Holds Are Automatically Applied Upon Persons Stopped by LAPD Officers

The respondent states that he is "pleading that as soon as you get stopped by Los Angeles police — even for a misdemeanor crime requiring no intent such as a burned out taillight — you may be strangled to death, as a matter of unconstitutional policy." Br. in Opp. 16. If by this "pleading" the respondent is now claiming that control holds are automatically applied upon traffic detainees,[6] it is certainly not the argument he successfully advanced in obtaining the preliminary injunction, nor did it form the basis of the district court's ruling.

This Court has stated that for standing to exist there must be a "logical nexus between the status asserted and the claim sought to be adjudicated." *Flast v. Cohen*, 392 U.S. 83, 102 (1968); see *Linda R.S. v. Richard D.*, 410 U.S. 614, 618 (1973). For purposes of this case, therefore, there must be a causal link between the policy complained of and the injury threatened. If the respondent now contends that the holds are being applied upon persons who are not legitimately in need of police control — but rather, upon persons who have given no cause for the use of any force — the relative safety of the holds becomes entirely academic. Even if the holds were perfectly safe in all circumstances, police could not justify applying them upon persons who were not in need of control. Indeed, they could not justify using any level of force under such circumstances.

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[6]The respondent's use of the permissive "may" is itself inconsistent with this interpretation of his argument.

The respondent at the preliminary injunction level did not attempt to prove that automatic application of the holds is a custom or practice of the LAPD (let alone an express policy). Instead, he argued that under the present express policy of the LAPD the holds (because of the risks associated with their use) are being used in situations where such risks are unacceptably high (viz., where officers are not threatened with death or serious bodily harm). It was this view of the case which was undoubtedly held by the district court in issuing its preliminary injunction. See Pet. App. 23a-27a.

## IV.
## The Respondent Misstates the Record

The respondent's opposing brief makes numerous and significant factual misstatements and omissions and also contains several erroneous citations to legal authority. The most egregious of these errors will be discussed below.

A. The respondent's Appendix A does not excerpt the record; rather, it is an editorialized rendition of police and coroner documents, some of which are contained in the record.[7] The prime example of important facts omitted by the respondent is his description of the events leading to the death of Charles J. Hill. Resp. App. A at 13. In discussing

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[7]The brief in opposition is 30 pages in length, the maximum permitted by Rule 22.2 of the Rules of the Supreme Court of the United States. Respondent's 15-page Appendix A is a transparent attempt to evade the page limitation.

the LAPD robbery-homicide report, no mention is made of the major altercation described in that document.[8]

B. The respondent asserts that the record is devoid of evidence to support the City's position that alternative control methods will result in more frequent injuries to and deaths of suspects. Br. in Opp. 13-14. The record amply demonstrates that baton techniques and karate kicks are dangerous self-defense methods that can result in frequent injuries and deaths. See EX. 52, pp. 5-6; EX. 56, p. 3; EX 62, pp. 41-44; EX. 63, pp. 38-39; EX. 68, pp. 93, 186-187; EX. 71, pp. 97-98, 108-110, 117-118; EX. 72, pp. 75, 92-93; EX. 73, pp. 70-71; EX. 74, pp. 41-45, 59-61; Exhibits to Emergency Application, EX. E, p. 3; cf. EX. 63, p. 80; EX. 68, p. 21. Historical empirical data on these higher self-defense methods is concededly relatively sparse

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[8]The report relates that Mr. Hill was observed by two police officers to be standing in vehicular traffic displaying behavior which led them to believe that he was mentally disturbed or under the influence of a drug, perhaps phencyclidine (PCP). The officers' encounter with Mr. Hill ultimately led to an altercation which began when he swung the buckle end of a belt striking one of the officers in the head. This *officer then drew his baton and struck Hill* on his left bicep and on the right side of his waist. Hill continued to swing his belt at the officer and the *officer once again hit Hill with the baton*. The officer and *Hill fell to the pavement* and the officer placed his right arm across Hill's neck and his left arm around Hill's chest, but this maneuver failed to gain control over Hill. The second officer then attempted to strike Hill in the sternum with his baton, but Hill lowered his head and *the blow landed on his face*. Hill continued to struggle and was *hit again on his head with the second officer's baton*. The struggle continued and Hill grabbed for the first officer's revolver and eventually was able to position the revolver in a firing position against the first officer's chest. The first officer fought with Hill and kicked the weapon away from him. Hill then attempted to flee, but the second officer tackled him, causing *Hill to fall and to strike the left side of his face on the pavement*. At this time the second officer applied the bar arm control hold, and Hill was handcuffed. Although handcuffed, he continued to fight the officers, but was eventually subdued. Hill was transported to the Hollywood area police station and was placed in a holding cell. A few hours later a jail officer observed that Hill was not moving and checked him for life signs with negative results. The coroner ascribed the cause of death to "sickle cell crisis." The coroner did not relate the cause of death to the bar arm hold or to continued blows from batons.

because of: (a) their relatively infrequent use due to the availability of the control holds and (b) the lack (until recently) of a reporting system connecting use of these methods with injuries or deaths.

C. The respondent asserts that the City "neglects to mention that most of the major police departments which do employ 'strangleholds' employ them only pursuant to express policies at the level specified in the district court's injunction — to wit, when serious bodily harm or death is threatened." Br. in Opp. 15. This statement is made without any reference to the record, no doubt because there is absolutely nothing in the record to support it.

D. The respondent maintains that LAPD officers generally refer to the control holds as causing the victim to "do the chicken." Br. in Opp. 11. Neither the cited portion of the record (EX. 44, p. 93) nor any other portion of the record supports the proposition that LAPD officers *generally* refer to applying the control holds as having a suspect "do the chicken."

E. The respondent contends that it is the consensus of the experts in this case that the control holds are extremely dangerous techniques. Br. in Opp. 12. This is not so. All of the City's experts agreed that the bar arm control hold is a more dangerous hold than the carotid control hold, but they also agreed that both holds will rarely result in death or serious bodily injury. See EX. 51, p. 6; EX. 53, pp. 2-5; EX. 55, pp. 2-3; EX. 57, pp. 3-4. The respondent's own expert, Mr. Bruce Tegner, found the carotid hold to be "efficient and humane" and "highly unlikely to result in permanent or serious injury." EX. 63, pp. 18-19.

F. The respondent asserts that "one of the Army killing techniques Tegner taught was the LAPD bar arm control." Br. in Opp. 12. In his deposition, Tegner stated that the hold taught by the United States Army is "[n]ot exactly but very similar to the methods that are depicted in the [LAPD] training bulletin." EX. 63, p. 46. Actually, the difference

between the Army's version and the LAPD's version is rather dramatic. The Army teaches continued application until death (EX. 63, p. 47), whereas the LAPD prescribes use of only enough force to gain control. Pet. App. 41a, 48a.

G. The respondent maintains that LAPD officers have "strangled to death" 14 persons. Br. in Opp. i. The present record is not adequate to support any firm conclusions about the cause of these deaths. See note 2, *supra*. The evidence contained in the record pertaining to the nine fatalities before the district court strongly suggests, however, that in most of these deaths other factors (*e.g.*, predisposing medical conditions, drugs) played significant roles. EX. 65, pp. 21-23, 25-26, 28-29, 34-37, 42.

H. The respondent's citation of and quotation from *People v. Trevino*, 72 Cal.App.3d 686, 692, 140 Cal.Rptr. 243 (1977), gives the impression that the opinion addressed risks associated with the control holds. Br. in Opp. 11. This is not so. The case concerned an effort by a police officer to retrieve a balloon thought to contain heroin in which the officer "placed his hand on defendant's throat under his jaw and applied sufficient pressure to prevent any swallowing while, according to the officer, not cutting off the defendant's air or circulation." 72 Cal.App.3d at 689.

**Conclusion**

For these reasons, and the reasons set forth in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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January, 1982

# Petitioner's Reply Brief

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No. 81-1064
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THE CITY OF LOS ANGELES,

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ADOLPH LYONS,

*Respondent*

**On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

## OPPOSITION TO MOTION TO DISMISS WRIT OF CERTIORARI AS IMPROVIDENTLY GRANTED

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## TABLE OF CONTENTS


| | Page |
|---|---|
| Introduction | 1 |
| Recent Factual Developments Have Not Diminished the Significance of the Issues Before the Court | 2 |
| Conclusion | 5 |


## TABLE OF AUTHORITIES

### Cases


Amer. Const. Co. v. Jacksonville Railway, 148 U.S. 372 (1893) ..... 3, 4

Myers v. Bethlehem Corp., 303 U.S. 41 (1938) ..... 3


### Textbook


R. STERN & E. GRESSMAN, SUPREME COURT PRACTICE (5th ed. 1978) ..... 3, 4

No. 81-1064

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# Supreme Court of the United States

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*Petitioner*

*v.*

ADOLPH LYONS,

*Respondent*

## OPPOSITION TO MOTION TO DISMISS WRIT OF CERTIORARI AS IMPROVIDENTLY GRANTED

### Introduction

By this memorandum petitioner City of Los Angeles (the "City") presents its opposition to the respondent's motion to dismiss the writ of certiorari as having been improvidently granted. In this regard the Court should be aware that several days ago the City filed a memorandum suggesting a question of mootness in which were detailed recent changes in Los Angeles Police Department ("LAPD") policy concerning use of the control holds. The City there argued that (a) assuming *arguendo* the existence of a "case or controversy," these changes have not made the case moot and (b) the stay of the court of appeals' mandate (and hence, of the preliminary injunction) should remain in effect.[1] Here,

[1]The City respectfully requests that the Court consider the City's memorandum suggesting a question of mootness in connection with the instant motion.

attention turns to whether, in light of these developments, the writ of certiorari ought to be dismissed.

Before proceeding, it may be useful to summarize the policy changes in question. On May 12, 1982 the City's Board of Police Commissioners imposed a six-month moratorium on use of the more commonly used control holds, the carotid holds, except in situations when deadly force is authorized. Several days before, the Chief of Police had prohibited use of the less frequently used and more dangerous bar arm technique. During the period of the moratorium, the Board has directed the LAPD to use and assess the effectiveness of alternative control techniques and report its findings to the Board every two months.[2]

**Recent Factual Developments Have Not Diminished the Significance of the Issues Before the Court**

The respondent contends that in view of these changes in policy, interlocutory review is no longer the "proper vehicle" for addressing the issues now before the Court. See Motion 2. He points to the general inclination against interlocutory review and urges that under the changed circumstances, the writ of certiorari ought to be dismissed. *Id.* at 2-3. He thereby asserts, in effect, that justiciability of the issues now before the Court is contingent upon the current use of the control holds by the LAPD.

The respondent's argument fails for two fundamental reasons. First, the respondent unjustifiably affixes a permanence to the moratorium. Second, the instant case fits within

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[2]The respondent erroneously states that the Board directed that written reports be kept of control hold applications. See Motion 2. This, in fact, was not part of the Board's order. Such a directive would have been superfluous, since the LAPD requires such reports as a matter of course. See City Br. 17-18.

established exceptions to the general tendency disfavoring interlocutory review.

The respondent's motion implies that the policy changes on the control holds are permanent. See Motion 3. But as discussed at some length in the City's memorandum suggesting a question of mootness (at p. 5), a moratorium by definition is not permanent and, in any event, use-of-force policies are inherently mutable. These policies concern the well-being of citizens and police officers and necessarily must be changeable as circumstances warrant. As things stand, the LAPD has merely suspended use of the more commonly used holds for a test period during which alternatives will be explored. This experiment would be unnecessary if its results were already known.

Review of the issues before the Court at this stage in the litigation is both appropriate and desirable. In their treatise on Supreme Court practice, Robert L. Stern and Eugene Gressman observe that while interlocutory orders are not reviewed by the Court "in the absence of some exceptional reason," SUPREME COURT PRACTICE 300 (5th ed. 1978), if "there is some important and clear-cut issue of law that is fundamental to the further conduct of the case and that would otherwise qualify as a basis for certiorari, the case may be reviewed despite its interlocutory status." *Id.* at 301. Thus, for example, they point out that a "lower court decision affirming the issuance of a preliminary injunction . . . has been reviewed on certiorari where 'there was an insuperable objection to the maintenance of the suit in point of jurisdiction and where it clearly appears that the decree was the result of an improvident exercise of judicial discretion.' " *Id.* at 301-302, *quoting Myers v. Bethlehem Corp.*, 303 U.S. 41, 52 (1938) (footnote omitted). These commentators further point out that in *Amer. Const. Co. v. Jacksonville Railway*, 148 U.S. 372 (1893), certiorari

was granted "where the nonfinal judgment presented a novel and important question of law and where the petitioner's position, if sustained, would render the decision wholly void." R. STERN & E. GRESSMAN, SUPREME COURT PRACTICE, *supra*, at 302.

The standing issue before the Court, in particular, easily meets these criteria. Since it is jurisdictional, if the City prevails the preliminary injunction could be a nullity and further litigation would not occur. Dismissal of the writ, however, would suggest that trial on the merits would somehow be beneficial. It is difficult to foresee, however, how the respondent could enhance his standing at trial.[3] Moreover, a trial on the constitutionality of the control holds would consume inordinate judicial and litigant resources. Substantial discovery remains, and a trial on the merits would entail, among other things, a parade of expert witnesses to the stand. Should the City not prevail on the merits, standing would be reviewable only on a petition for a writ of certiorari to this Court, perhaps two or three years hence.

The second issue before the Court addresses whether the preliminary injunction violates principles of federalism. The respondent suggests that inasmuch as City policy now substantially conforms to the preliminary injunction, there is no longer a substantial displacement of municipal authority. This contention fails to take into account that the fundamental issue of under what circumstances the federal judiciary may supervise organs of local government still needs to be addressed. The justiciability of this issue has not been affected by a moratorium which, for all we now know,

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[3]The recent changes in LAPD policy obviously do not enhance the respondent's standing (if anything, it has been diminished for the next six months), and, contrary to the respondent's view of things, the standing issue has not been "muddled." See Motion 3. The respondent had no standing before these developments and he certainly has none today.

could prove to be transitory just as easily as it could lead to long-standing policy.

In this regard, it must also be kept in mind that the preliminary injunction was based upon the conclusion that the control holds "shock the conscience" and thereby violate the due process rights of individuals upon whom the holds are applied. This extreme conclusion was clearly not warranted by the facts, and it further places into question whether litigation should continue in this case.[4]

In sum, should the writ be dismissed, a plaintiff with no standing would then bring to trial policies of a local police department on a theory requiring the demonstration of outrageous conduct in the hope that the district court would assume control over such policies. As both the Constitution and the public interest require that this not take place, the issues before the Court necessarily retain all of their significance.

**Conclusion**

The motion to dismiss the writ of certiorari as having been improvidently granted should be denied.

Dated: June 4, 1982.

Respectfully submitted,

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---

[4]The moratorium indicates only that the City and the district court are, for the moment at least, substantially in agreement on *police policy*. It does not represent an acknowledgment that the control holds are unconstitutional or otherwise unlawful. Indeed, the City before and after the moratorium has consistently maintained that inasmuch as reasonable people can differ over the wisdom of employing the control holds, their use or disuse necessarily does not "shock the conscience."

# Amicus Brief

1

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No. 81-1064

# IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

**THE CITY OF LOS ANGELES,**
*Petitioner,*

*vs.*

**ADOLPH LYONS,**
*Respondent.*

---

AMICI CURIAE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

---

## BRIEF OF THE LOS ANGELES POLICE PROTECTIVE LEAGUE, JOINED BY AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., AND THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., AS AMICI IN SUPPORT OF PETITIONER

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## TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES..... ii

STATEMENT OF JURISDICTION.....1

INTEREST OF THE AMICI.....2

SUMMARY OF ARGUMENT.....8

ARGUMENT: REASONS FOR GRANTING THE PETITION.....9

I. THE COURT OF APPEALS' RULING IN LYONS I CONTRAVENES THIS COURT'S PREVIOUS DECISIONS ON "STANDING".....10

II. THE COURT OF APPEALS' RULING IN LYONS II REPRESENTS AN UNPRECEDENTED EXTENSION OF FEDERAL COURT SUPERVISORY POWER.....12

CONCLUSION.....15

## TABLE OF AUTHORITIES

Page

### Cases


Allee v. Medrano (1974)
416 U.S. 802, 94 S.Ct. 2191,
40 L.Ed.2d 566.....11

Hague v. CIO (1939)
307 U.S. 496, 59 S.Ct. 954,
83 L.Ed. 1423.....11

Lyons v. City of Los Angeles
615 F.2d 1243 (9th Cir. 1980),
cert. denied, 449 U.S. 934
(1980).....5, 11

Lyons v. City of Los Angeles
656 F.2d 417 (9th Cir.,
August 17, 1981, modified
August 20, 1981) (per curiam)
mandate stayed pndg. cert.,
____ U.S. ____, 102 S.Ct.
14 (September 29, 1981).....5, 7, 12

Monell v. New York City
Department of Social
Services (1978)
436 U.S. 658, 98 S.Ct. 2018
56 L.Ed.2d 611.....12

O'Shea v. Littleton (1974)
414 U.S. 488, 94 S.Ct. 669,
38 L.Ed.2d 674.....11

Page

Owen v. City of Independence (1980)
445 U.S. 622, 100 S.Ct. 1398,
63 L.Ed.2d 673.....12

Rizzo v. Goode (1976)
423 U.S. 362, 96 S.Ct. 598,
46 L.Ed.2d. 561.....11, 13

Sosna v. Iowa (1975)
419 U.S. 393, 95 S.Ct. 553,
42 L.Ed.2d. 532.....12

Weinstein v. Bradford (1975)
423 U.S. 147, 96 S.Ct. 347,
46 L.Ed.2d 350.....12

Constitution

United States Constitution,
Article III, Sec. 2.....11

Statutes

Civil Rights Act of 1871,
42 U.S.C. §1983 et seq.....11

Rules

Rules of the Supreme Court,
Rule 36.....2

No. 81-1064

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Amici Curiae Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

# BRIEF OF THE LOS ANGELES POLICE PROTECTIVE LEAGUE, JOINED BY AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., AND THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., AS AMICI IN SUPPORT OF PETITIONER

---

## STATEMENT OF JURISDICTION

The Los Angeles Police Protective League, Americans for Effective Law

Enforcement, Inc., and the International Association of Chiefs of Police, Inc., file this Amici Curiae brief in the above-entitled case pursuant to Rule 36 of the Rules of the Supreme Court. Written consent to file an Amici Curiae Petition for a Writ of Certiorari was given by the respective counsel for the Petitioner and Respondent and is attached hereto.

## INTEREST OF THE AMICI

The Los Angeles Police Protective League (hereinafter "the League") is a voluntary, fraternal organization consisting of approximately 6,500 members of the Los Angeles Police Department. The League is certified and recognized by the City of Los Angeles as the employee organization for the Los

Angeles Police Department, and it represents its members in employment, disciplinary and, on occasion, legal matters.

Americans for Effective Law Enforcement, Inc., (hereinafter "AELE") is a non-profit educational organization that provides training, legal research assistance and professional consultation to the law enforcement community. Founded in 1966, AELE has appeared in the United States Supreme Court and lower tribunals as Amicus Curiae in numerous cases on behalf of professional law enforcement. Presently, AELE publishes five periodicals, which assist law enforcement personnel in their efforts to suppress crime. The organization, since 1974, has sponsored 24 three-day seminars on civil rights and

on legal responsibilities of police executives and their legal counsel, on a nationwide basis. In addition to its professional staff, AELE is comprised of several thousand citizen supporters.

The International Association of Chiefs of Police, Inc., (hereinafter "IACP") is a voluntary professional organization established in 1893 to further the science of police administration and promote professionalism in policing. IACP is comprised of Chiefs of Police and other law enforcement personnel from all fifty states and sixty-two foreign nations. Of its 12,600 members, over seventy percent hold command positions in the United States law enforcement field.

The interest of these Amici in the Petition for a Writ of Certiorari

submitted by the City of Los Angeles concerning **Lyons v. City of Los Angeles,** 615 F.2d 1243 (9th Cir. 1980), **cert. denied,** 449 U.S. 934 (1980) (hereinafter **"Lyons I"**) and **Lyons v. City of Los Angeles,** 656 F.2d 417 (9th Cir., August 17, 1981, modified August 20, 1981) **(per curiam) mandate stayed pndg. cert.,** ____ U.S. ____, 102 S.Ct. 14, 16, (September 29, 1981) (hereinafter **"Lyons II"**) stems from the severe impact on (1) public and police officer safety, and (2) the independent administration of local police functions, that will occur if the decisions of the Court of Appeals for the Ninth Circuit are allowed to stand.

In regards to the first concern, judicial prohibition of the use of neck control holds by officers except in

life-threatening situations will have a severe impact on public and police officer safety. The Amici strongly believe that no alternate control techniques exist that are as effective and as safe to use. Instead, the officers in question will be compelled to resort to higher force techniques to subdue combative or fleeing suspects, such as employment of guns and batons. Such a result would unquestionably jeopardize public and police officer safety and thereby lessen the quality of police services rendered to the public.

Addressing the second concern, the broad injunctive relief sanctioned by the Court of Appeals constitutes a judicial intrusion into local police administration that is legally-impermissible and factually-unwarranted.

Under the terms of the District Court Order (1) the City is forced to comply with certain record-keeping and reporting standards, and (2) the City must institute an alternate training program that meets District Court approval if it wishes the injunction against the use of control holds to be ended. Despite the Court of Appeals' assertion in **Lyons II** that these requirements constitute a "relatively innocuous interference by the judiciary with police practice", these Amici respectfully submit that the sweeping structural changes of police procedure required by the injunction are prohibited by the principles of federalism.

In essence, the Court of Appeals has presented the City with a Hobsonian choice. Although the City is reluctant

to commit limited human and financial resources to an ill-conceived judicial program, the City lacks any real choice in the matter if it wishes to protect the public welfare by continued officer-use of control holds. These Amici represent a broad spectrum of law enforcement interests and are fearful that the Court of Appeals' ruling will serve as erroneous precedent for future Federal Court regulation of local police functions -- unless checked by this Court.

## SUMMARY OF ARGUMENT

The decisions below raise issues of great importance. In this brief, these Amici demonstrate that the Court of Appeals' decisions with respect to standing and injunctive relief are in

direct conflict with the recent decisions of this Court. If this erroneous precedent is left undisturbed, these Amici believe that a severe blow will be dealt to the separate and independent existence of state and municipal government.

## ARGUMENT:

## REASONS FOR GRANTING THE PETITION

This Court should issue a Writ of Certiorari to the Ninth Circuit because the Court of Appeals' decisions in this case are clearly erroneous and threaten substantial societal harm if not corrected.

## I.

## THE COURT OF APPEALS' RULING IN LYONS I CONTRAVENES THIS COURT'S PREVIOUS DECISIONS ON "STANDING"

The Respondent lacks proper standing to seek the injunctive relief in question because (1) possible future injury to Lyons from police officer use of control holds is speculative and abstract, and (2) he has an adequate remedy at law for any alleged past injury that he has suffered.

On the first point, it is undisputed that the threat of future injury to the Respondent from police use of control holds is the same abstract threat that everyone in Los Angeles faces. As this Court has consistently ruled, a party's reliance on an abstract "statistical" threat of future injury does not satisfy the case or controversy requirement of

Article III. **O'Shea v. Littleton**, 414 U.S. 488 (1974); **Rizzo v. Goode**, 423 U.S. 362 (1976). The case law relied upon by the Court of Appeals to support its ruling in **Lyons I** is inapposite, because a "persistent pattern" of police action against a discrete and insular group simply does not exist in the instant case. See **Hague v. CIO**, 307 U.S. 496, (1939); **Allee v. Medrano**, 416 U.S. 802.

In regards to the second issue, the Court of Appeals in **Lyons I** ruled that the Respondent had standing because the case was "capable of repetition, yet evading review". Id. at 1249. However, this ruling ignores the fact that the Respondent possesses an adequate remedy at law, in that Title 42 U.S.C. §1983 et seq. authorizes damage suits against

public entities and employees who violate any citizen's Constitutional rights. See **Monell v. New York City Department of Public Social Services,** 436 U.S. 658 (1978); **Owen v. City of Independence,** 445 U.S. 622 (1980). Since the Respondent possesses an adequate remedy for his alleged past injury, he lacks standing on this basis to seek injunctive relief. See **Sosna v. Iowa,** 419 U.S. 393 (1975); **Weinstein v. Bradford,** 423 U.S. 147 (1975).

## II.

### THE COURT OF APPEALS' RULING IN LYONS II REPRESENTS AN UNPRECEDENTED EXTENSION OF FEDERAL COURT SUPERVISORY POWER

The prelimary injunction approved by the Court of Appeals in **Lyons II** calls for a major supervisory intrusion of the

Federal District Court into the daily workings of the Los Angeles Police Department. In this regard, this Court has steadfastly refused to permit such judicial intrusions into state and local governmental functions, absent "extraordinary circumstances". **Rizzo v. Goode**, 423 U.S. at 379. Furthermore, this Court has been especially protective where regulation of law enforcement conduct is sought.

> "[R]ecognition of the need for a proper balance in the concurrent operation of federal and state courts counsels restraint against the issuance of injunctions against state officers engaged in the administration of the State's criminal laws in the absence of a showing of irreparable injury which is 'both great and immediate'. [**Younger v. Harris**, 401 U.S. 37, 46 [27 L.Ed.2d 669, 91 S.Ct. 746] (1971).]"

The record of this case simply fails to support a conclusion that "extraordinary circumstances" involving risk of irreparable injury exist. Instead, the facts illustrate that the police department in question has undertaken a thoughtful and exhaustive examination of the subject before authorizing officer use of control holds. Furthermore, most major police departments in the Country employ these control holds. If the concept of federalism is to retain any meaning, then local governments and police agencies must remain free to exercise their discretion and administer their programs as best suited to local needs -- subject to traditional tort remedies for infrequent abuse or misconduct.

## CONCLUSION

The decisions below conflict with the recent decisions of this Court. It is essential to local governments and law enforcement agencies that this conflict be resolved promptly. The issues involved are of great legal and practical importance and should be decided by this Court.

Respectfully submitted,

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# Amicus Brief

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

THE CITY OF LOS ANGELES,

*Petitioner,*

v.

ADOLPH LYONS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## BRIEF OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS AS AMICUS CURIAE IN SUPPORT OF PETITIONER CITY OF LOS ANGELES, CALIFORNIA

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## TABLE OF CONTENTS


*Page*

Interest of the Amicus Curiae ..... 1

Statement of the Case ..... 4

Summary of Argument ..... 4

Argument ..... 4

I. Respondent lacks standing to pray for injunctive relief ..... 5

II. *Lyons II* represents an abandonment by the Court of Appeals of important principles of federalism and equity emphasized previously by this Court ..... 6

Conclusion ..... 10


## TABLE OF AUTHORITIES


**Cases:** *Page*

*Baker v. Carr*, 369 U.S. 186 (1962) ..... 6

*Lyons v. City of Los Angeles (Lyons I)*, 615 F.2d 1243 (9th Cir. 1980), *cert. denied*, 449 U.S. 934 (1980) ..... 5,7

*Lyons v. City of Los Angeles (Lyons II)*, 656 F.2d 417 (9th Cir. 1981), mandate stayed pend. cert., ___ U.S. ___, 102 S.Ct. 14 (Sept. 29, 1981) ..... 5,6,9

*National League of Cities v. Usery*, 426 U.S. 833 (1976) ..... 2

*O'Shea v. Littleton*, 414 U.S. 488 (1974) ..... 5,6

*Rizzo v. Goode*, 423 U.S. 362 (1976) ..... 2,7,8,9

**Constitution, statutes and regulations:**

U.S. CONST. art. III, §2, cl. 1 ..... 5

The Civil Rights Act of 1871, 42 U.S.C. §1983 ..... 3,9

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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## BRIEF OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS AS AMICUS CURIAE

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## INTEREST OF THE AMICUS CURIAE

This brief *amicus curiae* is filed on behalf of the more than 1600 local governments, or political subdivisions of states, that are members of the National Institute of Municipal Law Officers (NIMLO). These member local governments operate NIMLO through their chief legal officer, variously called city or county attorney, corporation counsel, city solicitor or law director and other titles, with each member local government having one vote on all actions which are cast by the organization. This brief *amicus curiae* is signed by the chief legal officers of NIMLO members on behalf of

their own local government and the chief legal officers of the members of NIMLO in their official capacity.

In those municipalities that operate police departments, local government attorneys who participate in NIMLO often are responsible for advising those police departments about the proper procedures and policies, including arrest and search procedures and prerequisites, to be followed in pursuing their law enforcement functions. The attorneys also represent their municipalities in actions instituted against the government as a result of the implementation of policies and procedures established for a police department. Often police officers are indemnified by the municipality in the performance of their official duties, thus municipal attorneys recognize that a high degree of care must be exercised to ensure that procedures guaranteeing the rights of all persons are established and observed. Such a degree of care is necessary both to secure a responsible government and for the protection of local taxpayers. The City of Los Angeles, California is a member of NIMLO.

Law enforcement already has been recognized by this Court as an important function of local government, if not a reason for its creation. In *National League of Cities v. Usery*, 426 U.S. 833 (1976), this Court would not countenance federal legislative interference with such functions of local governments. Analogously, principles of federalism should be applied to the federal judiciary with respect to the operation of a local police department. In fact, in its decision in *Rizzo v. Goode*, 423 U.S. 362 (1976), this Court did protect a local police department from undue interference by the federal judiciary. A misperception of the impact of its decision has prevented the Court of Appeals from properly applying the *Rizzo* standards in this case.

Traditionally, it has been for the states, and their political subdivisions, to determine the best manner in which to protect — simultaneously — the security and welfare of the public, the rights of suspected violators of the law, and the safety of enforcement officers. Of course, unfettered application of unreasonable police authority cannot be permitted in a republic; however, sufficient protection against such an exercise of authority is accorded by law: to the general public, through the Constitution; and to individuals, through statutory remedies, such as damages under 42 U.S.C. §1983.

Continuing federal judicial scrutiny of local law enforcement operations such as the Court of Appeals would inaugurate herein is impractical and unwarranted. Such scrutiny would create substantial uncertainty among local police departments, nationwide, with respect to the propriety of internal policies and procedures. Municipal expenditures for internal studies and periodic reviews of enforcement techniques, involving input from the public and experts in the field of law enforcement, such as those undertaken several times by the City of Los Angeles, would be discouraged, due to the possibility that conclusions reached as a result of the studies subsequently may be rejected by the federal judiciary. This effect would be contrary to the public interest, and the National Institute of Municipal Law Officers suggests that such federal judicial interference with local law enforcement functions also would be violative of the principles of federalism. Consequently, NIMLO urges reversal of the judgment rendered in this case by the United States Court of Appeals for the Ninth Circuit.

Consent to the filing of this brief has been granted by counsel for both parties. Copies of these letters of consent have been lodged with the Clerk of this Court.

## STATEMENT OF THE CASE

The statement of the case as set forth in Petitioner's Petition for Writ of Certiorari is adopted by the National Institute of Municipal Law Officers for purposes of this brief amicus curiae.

## SUMMARY OF ARGUMENT

Enforcement of the law is a primary function of state and local government. Officers of law enforcement agencies are responsible for the security and welfare of the public, the rights of suspected violators of the law and their own safety. Police officers are specially trained and are expected to use their expertise and discretion to determine the best manner in which to respond to a problematic situation. Interference by the federal judiciary with the actions, policies and procedures of local police officers and departments should be strictly limited.

## ARGUMENT

The Court of Appeals' affirmance of the broad injunctive relief granted by the District Court conflicts with constitutional requirements and standards established in applicable decisions of this Court. The effect of the decision below will be to enlarge substantially the scope of relief which may be granted by the federal judiciary in such cases. Nothing prevents the individual plaintiff-respondent herein from seeking appropriate damages for specific legal injuries to himself. The Court of Appeals' decision ignores the realities

of local law enforcement operations and the consequences for our Nation's system of Federalism that will result from such a decision.

## I. RESPONDENT LACKS STANDING TO PRAY FOR INJUNCTIVE RELIEF

With respect to the per curiam decision of the Ninth Circuit in *Lyons v. City of Los Angeles,* 656 F.2d 417 (9th Cir. 1981) (*Lyons II*), the question of whether respondent has the requisite standing to pray for the injunctive relief granted by the District Court and affirmed therein by the Court of Appeals is newly before this Court. While there may have been some doubt as to the likely resolution of respondent's request for injunctive relief following the Court of Appeals' decision in *Lyons v. City of Los Angeles,* 615 F.2d 1243 (9th Cir. 1980), *cert. denied,* 449 U.S. 934 (1980) (*Lyons I*), it is now clear that the federal courts do not have jurisdiction to award the respondent the injunctive relief formulated by the District Court and left intact by the Court of Appeals in *Lyons II, supra.* In fact, in structuring the injunctive relief affirmed in *Lyons II,* the federal judiciary has gone far beyond any pretense of providing an appropriate remedy for the appellee therein.

Regarding his claim for equitable relief, respondent has failed to allege facts sufficient to state a "case" or "controversy" within the meaning of Article III, §2, cl. 1 of the Constitution of the United States. ". . . [P]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief, however, if unaccompanied by any continuing adverse effects." *O'Shea v. Littleton,* 414 U.S. 488, 495-496 (1974). Respondent has not alleged any continuing effects from the procedures involved herein on the application of control holds.

In addition, this case clearly falls within the scope of this Court's concern, enunciated in *O'Shea, supra,* that any threat of injury to a plaintiff be real and immediate, rather than conjectural or hypothetical. This requirement, in effect, was ignored by the Court of Appeals in *Lyons II,* in that the Court of Appeals could not properly have found that any past wrongs had been committed with respect to the use of the control holds in general; a basis for finding that some wrong had been committed with respect to the use of the holds on the respondent, in particular, was even more remote. Therefore, in correctly applying the standards of *O'Shea,* the Court of Appeals could not conclude that the history of the use of the holds indicates a real and immediate threat of repeated injuries.

Respondent's only apparent claim of threatened injury is based on the attenuated train of logic that if, in the future, he is suspected of violating the law, an unnamed and unknown police officer perhaps will improperly apply a control hold to restrain respondent. Clearly, this abtract threat of harm could be cited equally by all persons within the jurisdiction of the City and, in any event, "takes us into the area of speculation and conjecture" which was the basis for the denial of relief in *O'Shea, supra* at 497. Since the potential harm to respondent is so remote, he does not have the requisite "personal stake in the outcome" to sustain federal jurisdiction in this action. *Baker v. Carr,* 369 U.S. 186, 204 (1962).

## II. *LYONS II* REPRESENTS AN ABANDONMENT BY THE COURT OF APPEALS OF IMPORTANT PRINCIPLES OF FEDERALISM AND EQUITY EMPHASIZED PREVIOUSLY BY THIS COURT

A finding that there does not exist a "case" or "controversy" upon which federal jurisdiction may be based in this matter, of course, would be determinative of respondent's entitlement to injunctive relief. However, amicus is further concerned that if this Court lets stand the Ninth Circuit Court of Appeals' decision granting standing to respondent, it will signal to all federal courts a retreat from this Court's decision in *Rizzo v. Goode,* 423 U.S. 362 (1976). Inevitably, such a signal would result in a multitude of lawsuits in the federal courts challenging all kinds of police procedures and, therefore, would force municipalities to constantly defend the internal practices of their law enforcement agencies.

In *Rizzo, supra,* this Court refused to permit judicial interference with the practices of the Philadelphia police department concerning procedures for handling citizen complaints alleging police misconduct; only the internal administrative procedures of the police department were at issue therein. The affect of the judicial interference involved herein is far more intrusive; it would restrict in a direct manner the on-line behavior of individual police officers.

This case involves equitable injunctive relief that circumscribes the ability of the Los Angeles police department to determine the amount of force necessary to effectuate an arrest. In effect, the Court of Appeals, in affirming the decision of the District Court, has substituted its judgment in this highly sensitive and specialized area for the judgment, developed over decades of on-line experience, of the Los Angeles police department. The injunction granted to respondent would entail, by necessity, a long relationship between the judiciary and a municipal agency such as was ruled improper in *Rizzo. See, Lyons I, supra,* 615 F.2d at 1249-1250, n.12. It is likely that the lower federal courts

would be requested to continue monitoring compliance in individual cases concerning whether: a particular officer was reasonably apprehensive about incurring serious bodily harm, within the definition of that term as the court had intended it to be understood; the modified training program, if approved, was being implemented properly; and the utilization of the control holds was being documented as required. Such a violation of the principles of federalism is especially objectionable where, as here, the City has evidenced circumspection regarding the methodologies of the police department through numerous studies on the utility of the control holds. Pet., 8-9. Modifications of the holds have been adopted where these studies have indicated that the change could effectuate a betterment in the ability of law enforcement officers to respond to particular situations. Pet., 9. The City doubts that the policies and procedures framed by the lower federal courts regarding the Los Angeles police department's use of the control holds will result in an improved ability of officers to fulfill their duties. *See,* Declaration of Daryl F. Gates, Chief of Police, LAPD, December 23, 1980, Exh. D, City's Applic. to Ct. App. for Emerg. Stay.

There is no allegation that the practice herein involved is applied in a racially discriminatory manner. There is no showing that repeated constitutional violations by the Los Angeles police department have resulted from the practice herein involved. There is no allegation or proof that any named police officer has misapplied the holds repeatedly, or that the police department has permitted any named officer to use the holds knowing that the officer is untrained in their applications. There is no allegation or showing that members of the police department have conspired to use the holds in an illegal manner; therefore, as in *Rizzo, supra,* 423 U.S. at

375, there is no "pattern" of misconduct to which the police department is causally linked, and threats of misconduct are even more attenuated here than in *Rizzo*. In fact, there is no allegation or showing that any particular officer is untrained in the use of the holds.

Police officers are faced with a myriad of decisions in the line of duty. Different situations require varying responses, depending upon the facts of each individual case. Where police officers, or the department, act in a manner so as to deprive an individual of constitutional rights, they may be held liable for damages under 42 U.S.C. §1983. The question here, however, is whether the judiciary should interfere with law enforcement practices *prior* to any police conduct: should the federal courts be permitted to act so as to deprive on-line police officers of their discretion to act in and respond to given situations in the manner that their training and experience would indicate to be most suitable?

Such interference by the federal judiciary into the area of local law enforcement should not be glibly characterized as "relatively innocuous," *Lyons II, supra,* 656 F.2d at 418, where law enforcement activities, policies and procedures of local police departments nationwide are threatened thereby. In fact, the arbitrariness with which the District Court justifies the grant of broad injunctive relief with a statement of "facts" that are contrary to the uncontroverted evidence presented by the City or are based on unsupported assumptions, Pet. 9-11, demonstrates that such interference is highly offensive to principles of federalism and standards of equity. The District Court's determination that the control holds constitute deadly force, Pet. App. D, 25a, cannot reasonably be justified under the evidence as presented to that court so far; thus there is no basis for finding compliance with the requirement, reaffirmed in *Rizzo, supra,* 423 U.S.

at 379-380, that injunctive relief be granted against agencies of local governments only in "the most extraordinary circumstances."

Amicus is concerned that if this Court allows the equitable relief granted by the District Court and affirmed by the Court of Appeals to remain in effect, every training course, every training manual and all internal police department practices and regulations of municipal law enforcement agencies nationwide will be subject to judicial interference. The discretion required by police work to act as borne of experience will be severely circumscribed, and may result in increased incidents of injury, should the injunction be permitted to stand. The decision of the Court of Appeals in this case, NIMLO submits, should be reversed.

## CONCLUSION

For the foregoing reasons, the National Institute of Municipal Law Officers, as *amicus curiae,* respectfully submits that petitioner City of Los Angeles' petition for a writ of certiorari should be granted and that the decision rendered by the United States Court of Appeals for the Ninth Circuit in this case should be reversed.

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January 1982

# Amicus Brief

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

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CITY OF LOS ANGELES, et al.,
*Petitioners,*

v.

ADOLPH LYONS,
*Respondent.*

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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## BRIEF OF AMICUS CURIAE, CITY OF SAN JOSE, CALIFORNIA, AND OTHER JOINING CITIES OF CALIFORNIA, IN SUPPORT OF PETITIONERS' PETITION FOR WRIT OF CERTIORARI

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## TABLE OF CONTENTS

Page

Interest of the amicus curiae ..... 1

Statement of the case below ..... 3

Reasons for granting the writ ..... 5

Questions presented ..... 6

I.—This court should clarify whether standing to seek broad injunctive prohibitions against use of a long-standing law enforcement procedures properly rests on the assumed basis that the mere continuance of those procedures poses a future threat of injury to the party challenging the procedures ..... 6

II.—This court should determine whether the injunctive relief obtained below unduly entangles federal courts in the daily functions of a local governmental entity in contravention of "Our Federalism," in view of the clear availability of an adequate remedy at law ..... 12

Conclusion ..... 15

## TABLE OF AUTHORITIES CITED

### Cases

Page

*Allee v. Medrano*, 416 U.S. 802 (1974) ..... 8, 9

*Ashcroft v. Mattis*, 431 U.S. 171 (1977) ..... 9

*Baker v. Carr*, 369 U.S. 186 (1962) ..... 7

*Flast v. Cohen*, 392 U.S. 83 (1968) ..... 7

*Hague v. Committee for Industrial Organization*, 307 U.S. 496 (1939) ..... 8, 9

*National League of Cities v. Usury*, 426 U.S. 833 (1976) ..... 12

*O'Shea v. Littleton*, 414 U.S. 488 (1974) ..... 5, 8, 11, 13

*Rizzo v. Goode*, 423 U.S. 362 (1976) ..... 5, 6, 8, 9, 11, 13

*Weinstein v. Bradford*, 423 U.S. 147 (1975) ..... 10, 11

*Younger v. Harris*, 401 U.S. 37 (1971) ..... 12, 13

### CONSTITUTION

United States Constitution:
Article III ..... 4, 9

### STATUTE

Civil Rights Act of 1871 (42 U.S.C. Section 1983) ..... 2, 4

### OTHER AUTHORITIES

Wright, Miller & Cooper, *Federal Practice and Procedure* (1975) ..... 7

No. .....

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**On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

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**BRIEF OF AMICUS CURIAE, CITY OF SAN JOSE, CALIFORNIA, AND OTHER JOINING CITIES OF CALIFORNIA, IN SUPPORT OF PETITIONERS' PETITION FOR WRIT OF CERTIORARI**

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## INTEREST OF AMICI CURIAE.

A decision in this case permitting standing to sue for injunctive relief by plaintiffs dissatisfied with practices of local police agencies will have an immediate effect on use of certain law enforcement procedures, which effect in itself is of substantial

concern to Amici Curiae herein. The foreseeable long-range consequences of the determination as to standing and the provisions of the preliminary injunction are profoundly disturbing for both law enforcement and the ability of local governmental entities to perform critical functions without continuing oversight by the federal judiciary in the guise of "preventing" future violations of constitutional rights pursuant to 42 U.S.C. § 1983.

Amicus Curiae City of San Jose, like many cities in California, has permitted the use of the carotid restraint by its police officers, subject to a training program which meets or exceeds the training standards developed by the Commission on Peace Officer Standards and Training of the State of California. Training peace officers to properly perform their duties and to be effective is a complex responsibility, and the development of proper training programs for use of the carotid restraint or any other law enforcement techniques should not be left to the erratic courses of litigation as has occurred in this case. The preliminary injunction issued below ignores the fact that use of the challenged control holds had been repeatedly reviewed by the Los Angeles Police Department since 1970, with adjustments made to rectify any perceived difficulties with such use. The injunction's provisions on the adequacy of the training is difficult to square with either the history of this case or the proper function of the federal judiciary as arbiters of "cases" and "controversies."

A decision by this Court not to grant the petition for writ of certiorari by the City of Los Angeles will

have an immediate and adverse impact on Amici herein, as police departments of local governments of California and across the nation would, of necessity, face the certain prospect of revising day-to-day law enforcement procedures and of losing an effective alternative to other techniques more certain to inflict injury. Amici would also encounter the unpleasant reality that, contrary to recent precedent, broad injunctions against use of long-standing law enforcement procedures could be obtained by one individual asserting that any particular restraint procedure was itself unconstitutional and might be unstitutionally applied to others. Such a tenuous basis for standing, if allowed to continue, will truly allow wholesale operation of local governmental agencies by the federal judiciary.

For the above reasons, Amicus Curiae City of San Jose, and other cities participating individually in this brief, have an interest in supporting the City of Los Angeles in its petition for writ of certiorari.

## STATEMENT OF THE CASE BELOW.

In October of 1976, Adolph Lyons was stopped by two police officers of the City of Los Angeles Police Department for a traffic infraction. Lyons asserts that in the course of the incident, one of the officers allegedly applied a "chokehold" restraint to him until he was rendered unconscious, which action he contends was taken without provocation or legal justification for use of the restraint. Subsequently, Lyons filed a complaint in the United States District Court for the Central District of California under the Civil

Rights Act of 1871 (42 U.S.C. Section 1983), seeking damages and injunctive relief against the Los Angeles Police Department.

The City of Los Angeles filed its answer to the complaint and moved for partial judgment on the pleadings on the grounds that respondent's complaint for injunctive and declaratory relief did not state a case or controversy as required by Article III of the United States Constitution, or an adequate basis for equitable relief against the City. That motion was granted, and respondent Lyons appealed to the Court of Appeals for the Ninth Circuit, which reversed [*Lyons v. City of Los Angeles* (1980) 615 F. 2d 1243. (*Lyons I*)]. The appellate court held that the case or controversy requirements were satisfied as there was "a strong possibility of recurrence of this police tactic" (*Id.* at 1248), and that Lyon's claim was "capable of repetition, yet evading review" (*Id.* at 1249). Certiorari was denied, although Justices White, Powell, and Rehnquist dissented from the denial. *City of Los Angeles v. Lyons*, 449 U.S. 934 (1980).

On remand to the district court, Mr. Lyons succeeded in obtaining injunctive relief, and the Ninth Circuit Court of Appeals has affirmed. *City of Los Angeles v. Lyons*, 656 F. 2d 417 (*Lyons II*). Only the issuance of a stay order pending the timely filing and disposition of a petition for writ of certiorari has prevented the provisions of that order from affecting the daily law enforcement activities of the Los Angeles Police Department, and indeed, the police departments of many cities in California, if not the nation. The preliminary injunction at issue bars the

use of certain "chokehold" restraints except in situations threatening death or serious bodily harm, orders the City to submit an "adequate" training program on such restraints for court approval, and requires written reports of all applications of such restraints with ready availability of such records to the District Court.

## REASONS FOR GRANTING THE WRIT.

In *Lyons I*, the Court of Appeals sought to distinguish this case from the decisions in *O'Shea v. Littleton*, 414 U.S. 488 (1974), and *Rizzo v. Goode*, 423 U.S. 362 (1976), on three bases; (1) that respondent Lyons and "every citizen" in Los Angeles faced a more immediate threat of being subjected to the allegedly unconstitutional practices in the case than the plaintiffs in *O'Shea* and *Rizzo* confronted under the circumstances of those cases; (2) that respondent Lyons sought "no massive structural relief"; and (3) respondent Lyon's case was not "moot" because his claim was one in which there existed a strong possibility of recurrence, and because this case was "capable of repetition, yet evading review." *Lyons v. City of Los Angeles*, 615 F. 2d 1243, 1246-49. If the difficulties of the decision on standing in *Lyons I* were not sufficiently evident at that time, the subsequent entry of the preliminary injunction by the District Court has only served to sharpen the necessity for reviewing this case.

The decisions rendered during the litigation of this case vary with the precedents set in *O'Shea* and

*Rizzo*, present complex problems with principles of federalism, and unduly restrict the use of a long-established law enforcement procedure on the limited set of facts alleged by a single individual. For these reasons, the petition for writ of certiorari of the City of Los Angeles should be granted.

## QUESTIONS PRESENTED.

### I.

**This court should clarify whether standing to seek broad injunctive prohibitions against use of long-standing law enforcement procedures properly rests on the assumed basis that the mere continuance of those procedures pose a future threat of injury to the party challenging the procedure.**

The consequences of the decision of the Ninth Circuit Court of Appeals in *Lyons I* on the issue of respondent's standing to seek injunctive relief has far-reaching implications for the dimensions of the standing doctrine as formulated over the years by the decisions of this Court, as well as for the ability of local governmental agencies to function without continual oversight from federal courts in devising responsive law enforcement tactics and procedures.

One of the fundamental concerns with standing to sue within the limitations imposed by Article III is whether the party bringing suit was "alleged such

a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker v. Carr*, 369 U.S. 186, 204 (1962). This theme of "concrete adverseness" was further elaborated upon in *Flast v. Cohen*, 392 U.S. 83 (1968), in which the Court stated that the "fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated." *Id.* at 98. The Court also stated:

> "Thus, in terms of Article III limitations on federal court jurisdiction, the question of standing is related only to whether the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution. It is for that reason that the emphasis in standing problems is on whether the party invoking federal court jurisdiction has 'a personal stake in the outcome of the controversy,' (citing *Baker v. Carr, supra*), and whether the dispute touches upon 'the legal relations of parties having adverse legal interests.' (citation omitted.)" *Id.* at 101.

Implicit in the standing doctrine are policies not solely related to the "personal stake in the outcome" which assures presentation of issues by parties with concrete, rather than abstract, concerns. "The other major focus of traditional concern has been that specific facts stimulate more comprehensive and accurate adjudication than the flights of fancy." Wright, Miller, & Cooper, *Federal Practice and Procedure* (1975), Section 3531, p. 335. Conceptually akin to those funda-

mental concerns of deciding cases on the basis of specific facts presented by a party with a personal stake in resolution of the claim presented is the requirement enunciated in *O'Shea v. Littleton, supra,* that in the context of suits for injunctive relief "continuing, present adverse effects" are necessary for standing to be conferred. *Id.* at 495-96. In sum, these principles effectively result in an analysis of whether the relief sought is appropriately sought by the plaintiff and will affect his status if granted.

The Court of Appeals sought to avoid the aforementioned standing concerns by embellishing particular factual allegations of the complaint in *Lyons I* and stretching them into a massive pattern of unconstitutional practice, so as to bring this case within the ambit of the decisions in *Hague v. Committee for Industrial Organization,* 307 U.S. 496 (1939) and *Allee v. Medrano,* 416 U.S. 802 (1974). The Court of Appeals stated that since the "chokehold restraints" were accepted police practice, could be employed even if a citizen were stopped on a minor traffic violation, and since many motorists drive long distances in Los Angeles, therefore the "odds" were much greater than in *O'Shea* and *Rizzo* that "encounters" would take place which would justify the injunctive relief denied in those two cases. *Lyons v. City of Los Angeles,* 615 F. 2d 1243, 1246-47.

This factual assumption made by the Court of Appeals, critical to its determination on the issue of standing, is not supported by the record to be reviewed by this Court. It is *not* the policy of the Los Angeles Police Department to apply these holds to any citizen stopped on a minor traffic violation, but rather to

utilize the challenged restraints only to match and overcome an extreme degree of physical resistence employed by the suspect or arrestee. "Every citizen" stopped for a traffic violation is *not*, solely by virtue of this policy, subjected to the challenged holds. The potential massive pattern of allegedly unconstitutional practice on which the appellate court hinged its standing determination does not accurately reflect the actual authorized use of these holds.

Furthermore, neither *O'Shea* or *Rizzo* should stand for the proposition that "odds" alone can determine standing, contrary to the intimations of the Court of Appeals that these two cases require only such a minimal showing. *Id.* at 1247. The increase in the dimensions of standing which this approach adopts, if taken along its logical path, would mean that any one party adversely affected by a particular governmental practice *as applied to that party* could bring suit to enjoin that practice as it might apply to anyone else, so long as the "odds" indicated that the practice would recur, and the challenged practice *might* affect the same party once again. This aspect of *Lyons I* alone merits granting the petition for writ of certiorari. This "unadorned" determination of "greater odds" in this case than in either *Rizzo* or *O'Shea* is also "quite dissimilar to the factual settings" of *Hague* and *Medrano, supra. Rizzo v. Goode, supra,* at 375.

Aside from partially basing the decision on standing on "odds," the decision in *Lyons I* apparently ignores other limitations imposed on the federal courts by Article III of the Constitution. As stated in *Ashcroft v. Mattis,* "(e)motional involvement in a lawsuit is

not enough to meet the case or controversy requirement . . . . " 431 U.S. 171, 173 (1977). Emotional involvement in the terms of the preliminary injunction is all that the respondent in this lawsuit appears to have, as it is difficult to perceive how the grant of injunctive relief "touches upon the legal relations" of the respondent Lyons with the petitioner herein. What are the "continuing, present adverse effects" upon respondent herein that justify the extraordinary relief granted?

If the determination in *Lyons I*, *supra*, regarding standing *qua* standing was not sufficiently "at odds" with precedent to warrant review, the other considerations subsumed in the appellate Court's discussion on standing would in themselves merit this Court's attention. The Court of Appeals also sought to avoid any suggestion of mootness of the controversy on the basis that "there is a strong possibility of recurrence of this police tactic." *Id.* at 1248. According to *Weinstein v. Bradford*, 423 U.S. 147 (1975), two elements must be met for the "capable of repetition, yet evading review' doctrine to come into play in the absence of a clas action. First, "the challenged action" must be too short in duration "to be fully litigated prior to its cessation or expiration." Second, there must be "a reasonable expectation that the *same* complaining party would be subjected to the same action again." *Id.* at 149 (emphasis added). The Court of Appeals apparently utilized tests differing from the foregoing in its determination on the mootness issue, as in *Lyons I* the Court stated its belief that the Supreme Court has invoked the "capable of repetition, yet evading review" stand-

ard "even if the future recurring controversy has been shown to have but a small chance of affecting the original plaintiff." *Lyons I, supra,* at 1249. The determination on mootness was apparently based on the appellate court's perception that use of the restraints could not be challenged unless standing was conferred. The difference in analysis of the mootness issue between *Weinstein v. Bradford, supra,* and the *Lyons I* decision should be reviewed for clarification of the apparent inconsistencies, especially in view of the obvious fact that the constitutionality of the "chokehold" restraints in dispute can be litigated in respondent's Section 1983 claim for damages.

Finally, the Court of Appeals sought to distinguish respondent Lyon's request for injunctive "relief" from the decisions in *O'Shea* and *Rizzo* on the basis that the relief procured was not a "massive federal structural decree involving a state institution," and "more lenient Article III standards of standing or mootness" apply where the decree requested is "preventive" in nature. *Lyons I, supra,* at 1249. The issue of whether more "lenient" Article III standards could have properly applied to this case has clearly been "mooted" by the issuance of the preliminary injunction below. Principles of federalism have been implicated by the provisions of the injunction granted by the District Court and its affirmance in *Lyons II,* 656 F. 2d 417 (1981), and it is this issue which most concretely affects Amici Curiae herein.

## II.

## This court should determine whether the injunctive relief obtained below unduly entangles federal courts in the daily functions of a local governmental entity in contravention of "Our Federalism", in view of the clear availability of an adequate remedy at law.

In *Younger v. Harris*, 401 U.S. 37 (1971), this court articulated fundamental and essential concerns with the issuance of federal court injunctions against state criminal proceedings on the basis that basic equity doctrines preclude such injunctions when the moving party has an adequate remedy at law and will not suffer irreparable injury, and that such a policy is equally vital under the Constitution on "the notion of 'comity', that is, a proper respect for state functions . . . ." *Id.* at 44. This concept of "Our Federalism" does not mean blind deference to 'States' Rights'. . . . " Instead, in the words of the Court:

> "What the concept does represent is a system in which there is a sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." *Id.*

Similar concerns for principles of federalism were exhibited in *National League of Cities v. Usury*, 426

U.S. 833 (1976), in connection with the exercise of congressional authority over "integral operations in areas of traditional governmental functions." *Id.* at 852. *O'Shea*, in its determination that exercise of equitable powers was inappropriate, echoed the concerns delineated in *Younger*:

> "The Court has recently reaffirmed 'the basic doctrine of equity jurisprudence that courts of equity should not act, and particularly should not act to restrain a criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief.' (citing *Younger, supra.*)" *O'Shea, supra*, 414 U.S. 488, 499.

Thus it is not surprising that *Rizzo* also recognized the foregoing concerns with federalism. Although this Court in *Rizzo* stated that perhaps the principles of federalism "were entitled to their greatest weight in cases where it was sought to enjoin a criminal prosecution in progress," the decision also indicated that the principles were also applicable "where injunctive relief is sought, not against the judicial branch of the state government, but against those in charge of an executive branch of an agency of state or local governments . . . ." *Rizzo, supra*, 423 U.S. at 380.

Pragmatically, the preliminary injunction in this case goes beyond "significantly revising the internal procedures" of a police department which was disapproved in *Rizzo*. The preliminary injunction below, barring as it does the use of carotid and bar-arm control holds unless death or serious bodily injury is imminent, is in actuality much more intrusive on the day-to-day functions of a police department, as it affects the law enforcement procedures utilized in situa-

tions which can minimally be characterized as "difficult," by peace officers who encounter a wide range of individuals under a broad range of circumstances.[1] The preliminary injunction intrudes into an enormous range of tactical law enforcement situations on the rather tenuous fact pattern presented by one individual; the constitutionality of overall use of these restraints has been determined on the most limited set of facts.

The injunction issued below goes even further than affecting the law enforcement tactics of officers on the streets, however. It orders the development of a training program, including a "*detailed* written training manual prepared by *qualified* individuals" (emphasis added), along with "practical training sessions" for members of the force, in order to remedy a training program which the district court apparently deemed inadequate. It is most unclear what the court will deem adequate, and indeed, what standards the court could articulate to distinguish the present training program from any later presented. A detailed reporting system is also required, with ready access to those reports by the court. If development of training programs for

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*Ftn. 1* The central paradox of the District Court's equation of these holds with deadly force is that these "chokehold" restraints are utilized by peace officers precisely to avoid the use of deadly force, and generally to avoid alternatives which are far less pleasant than the application of a control hold. Use of a baton or nightstick in subduing a suspect *invites* physical injury. Use of the ultimate "deadly force," a firearm, will always result in physical harm (unless poorly aimed). Even accepting the statistics propounded by the District Court that use of these holds has resulted in nine fatalities in five years, it is myopic to order such a significant restraint on the use of these restreints without consideration of the alternatives.

police officers is a legitimate activity of a state or local governmental entity, then the court's order hardly exhibits due deference to principles of federalism.

It is difficult to discern under what circumstances an injunction could reach further into the workings of a local governmental agency to impose "a sharp limitation" on the ability of a police department, and its officers, to utilize some reasonable discretion as to law enforcement tactics and procedures. The precedent for interference in the daily operations of local governmental agencies by federal courts at the behest of citizens who are distraught with a particular practice, regardless of the degree of justification which may accompany a complaint, is truly disturbing from the perspective of Amici Curiae herein. If respondent Lyons had no other adequate remedy, different constitutional policies might very well come into play; however, surmising what would justify the degree of interference contemplated by the injunction issued below is a useless exercise in view of the clear availability of an adequate remedy at law.

## CONCLUSION

A random survey of thirty police agencies throughout California by Amici Curiae City of San Jose reveals that tweny-seven of the thirty agencies authorize use of the carotid restraint; the remaining three agencies prohibited its use, but one of those three agencies did so because it had not trained anyone in its use. (*See* Appendix C.) While use of the carotid restraint or the bar-arm control hold may be sensitive in the eyes of many people, as graphic descriptions of its

effect tend to generate unpleasant associations, use of such restraints have an undeniable tactical importance to law enforcement agencies. Such use should not be so summarily and severely limited on the basis of one individual's experience with use of the challenged restraints, as was effectively accomplished by the issuance of the preliminary injunction below. Legal precdent does not support the decision, nor does common sense.

The United States Supreme Court should grant certiorari in this matter for the numerous compelling reasons stated herein. The ramifications of the various decisions made throughout the history of this case will touch upon the relations of citizens and their local governments throughout the country, as well as affect the relations between the federal and state or local governments. The policies at issue warrant this Court's review, as substantial constitutional questions are presented by this case.

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**(Appendices follow)**

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## Appendix "B"

Although Rules 36 permits submission of this *amicus* brief of City of San Jose by its authorized law officer, City Attorney Robert J. Logan, without the written consent of the parties, *amicus* City has solicited and obtained consents from the parties nonetheless, so as to assure compliance and advise the parties of City's interest. Those consents are included in Appendix B to this brief.

Office of
City Attorney
City of San Jose [Letterhead]

Robert J. Logan
City Attorney

November 10, 1981

Mr. Michael Mitchell
5850 Canoga Avenue
Warner Center, 4th Floor
Woodland Hills, CA 93167

Re: *City of Los Angeles v. Lyons*

Dear Mr. Mitchell:

The League of California Cities, the City of San Jose, and other participating cities desire to file a brief amicus curiae in the above-captioned case in which a petition for a writ of certiorari is to be filed by Los Angeles with the United State Supreme Court. Although Rule 36(4) permits submission of this amicus brief of the City by its authorized law officer without consent of the parties, the City of San Jose solicits, on its behalf and on behalf of other cities who will be joining in this brief, your consent for its filing.

Sincerely yours,

/s/ ROBERT J. LOGAN
City Attorney

RJL:jl

On behalf of the attorney for the Respondent, Lyons, I hereby give such consent.

/s/ MICHAEL MITCHELL
Michael Mitchell

Office of
City Attorney
City of San Jose [Letterhead]

Robert J. Logan
City Attorney

November 10, 1981

Lewis N. Unger
Deputy City Attorney
Office of the City Attorney
City Hall East
Los Angeles, CA 90012

Re: *City of Los Angeles v. Lyons*

Dear Mr. Unger:

The League of California Cities, the City of San Jose, and other participating cities desire to file a brief amicus curiae in the above-captioned case in which a petition for a writ of certiorari is to be filed by Los Angeles with the United States Supreme Court. Although Rule 36(4) permits submission of this amicus brief of the City by its authorized law officer without consent of the parties, the City of San Jose solicits, on its behalf and on behalf of other cities who will be joining in this brief, your consent for its filing.

Sincerely yours,

/s/ ROBERT J. LOGAN
City Attorney

RJL:jl

On behalf of the attorneys for the Petitioner, City of Los Angeles, I hereby give such consent.

/s/ LEWIS N. UNGER
Lewis N. Unger

## Appendix "C"

From November 9th through November 12th, 1981, a survey of the following police agencies in California was conducted by the San Jose Police Department, regarding whether use of the carotid restraint was authorized by the surveyed agencies:

1. Alameda County Sheriff's Office
2. Anaheim Police Department
3. Bakersfield Police Department
4. San Mateo Sheriff's Office
5. Burlingame Police Department
6. Salinas Police Department
7. Calaveras County Sheriff's Office
8. Campbell Police Department
9. Contra Costa County Sheriff's Office
10. Richmond Police Department
11. El Dorado County Sheriff's Office
12. Fresno Police Department
13. Kern County Sheriff's Office
14. Santa Clara County Sheriff's Office
15. Mountain View Police Department
16. Humboldt County Sheriff's Office
17. Monterey County Sheriff's Office
18. Santa Barbara Police Department
19. Santa Clara Police Department
20. Menlo Park Police Department
21. Merced County Sheriff's Office
22. Milpitas Police Department
23. Oakland Police Department
24. San Diego Police Department
25. San Diego Sheriff's Office
26. San Francisco Police Department
27. Sacramento Police Department
28. Sacramento Sheriff's Office
29. Vacaville Police Department
30. Vallejo Police Department

Of the foregoing police agencies, only the Police Departments of Salinas, Menlo Park, and Fresno prohibited use of the carotid restraint and had written policies against its use. Fresno Police Department did not authorize use of the restraint because it had no training program.

# Petitioner's Brief

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No. 81-1064

IN THE

# Supreme Court of the United States

October Term, 1981

THE CITY OF LOS ANGELES,

*Petitioner*

*v.*

ADOLPH LYONS,

*Respondent*

**On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

## BRIEF FOR THE CITY OF LOS ANGELES

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## Questions Presented

1. Does a plaintiff lack standing to request a federal court to enjoin a municipal police department from using a particular force technique against him and others where (a) he is not specifically threatened, (b) he has a remedy for damages, and (c) he represents only himself?

2. Does a federal court order constitute a substantial interference in the operation of a municipal police department where it (a) modifies policies concerning use of force and (b) takes control of such department's training and reporting systems relative to a particular force technique?

## TABLE OF CONTENTS


Page

Questions Presented ..... i
Opinions Below ..... 1
Jurisdiction ..... 2
Constitutional Provisions, Statute, Rules of Court, and Local Laws Involved ..... 2
Statement ..... 3
1. Proceedings ..... 3
a. Lyons I ..... 4
b. Lyons II ..... 6
2. Facts ..... 7
a. The Respondent's Injury ..... 7
b. Threats of Injury ..... 8
c. The Control Holds ..... 9
(1) The Holds in the Context of Overall Use-of-Force Policy ..... 9
(2) Description of the Holds ..... 11
(3) History of the Holds ..... 12
(4) Officer Training ..... 14
(a) Recruit Training ..... 14
(b) In-service Training ..... 15
(c) Training Review ..... 16
(5) Reporting Practices ..... 17
(6) Risks of Injury or Death ..... 18
(7) Alternatives to the Control Holds ..... 21
Summary of Argument ..... 23
Argument ..... 26

Page

I.

The Respondent Lacks Standing to Seek Injunctive or Declaratory Relief ..... 26

A. A "Case or Controversy" for Equitable Relief Does Not Exist ..... 26

1. Fundamental Principles ..... 26

2. Standing to Obtain Injunctive Relief .... 28

B. There Is an Otherwise Inadequate Basis for Equitable Relief ..... 31

1. The Respondent Has a Damages Remedy ..... 31

2. A Justiciable Threat Did Not Exist Just Prior to Application of the Hold ..... 35

C. The Respondent Represents Only Himself .. 36

1. Class Relief Was Inappropriate ..... 36

2. Class Certification Proceedings Should Have Preceded Consideration of the Preliminary Injunction ..... 37

3. Class Proceedings Could Not Enhance the Respondent's Standing ..... 39

II.

The Court of Appeals' Decision in Lyons II Is Antithetical to Principles of Federalism and Equity Established by This Court ..... 40

A. The Preliminary Injunction Constitutes a Major Displacement of Municipal Authority .... 41

B. The Intrusion Is Not Justified ..... 45

C. The Constitution Requires No More Than Rational Official Conduct ..... 46

Conclusion ..... 47

Page

Appendix A. Rules of Court Involved ..... 1a

Appendix B. Local Laws Involved ..... 7a

Appendix C. Relevant District Court Proceedings During Pendency of Appeal in Lyons II ..... 8a

Appendix D. Excerpts from District Court Documents Not Contained in the Record ..... 9a

Appendix E. Excerpts from LAPD Reports Not Contained in the Record ..... 11a

## TABLE OF AUTHORITIES


| Cases | Page |
|---|---|
| Allee v. Medrano, 416 U.S. 802 (1974) | 39, 40 |
| Ashcroft v. Mattis, 431 U.S. 171 (1977) | 28 |
| Babbitt v. Farm Workers, 442 U.S. 289 (1979) | 28 |
| Bailey v. Patterson, 369 U.S. 31 (1962) | 39, 40 |
| Baker v. Carr, 369 U.S. 186 (1962) | 27 |
| Baker v. McCollan, 443 U.S. 137 (1979) | 40 |
| Baltimore Contractors v. Bodinger, 348 U.S. 176 (1955) | 41 |
| Baxter v. Palmigiano, 425 U.S. 308 (1976) | 37 |
| Brown v. Chote, 411 U.S. 452 (1973) | 41 |
| Carey v. Piphus, 435 U.S. 247 (1978) | 32 |
| City of Los Angeles v. Lyons (Lyons I), 449 U.S. 934 (1980) | 5, 36 |
| Davis v. Passman, 442 U.S. 228 (1979) | 32 |
| Duke Power Co. v. Carolina Env. Study Group, 438 U.S. 59 (1978) | 34 |
| East Texas Motor Freight v. Rodriguez, 431 U.S. 395 (1977) | 39 |
| Eisen v. Carlisle & Jacqueline, 417 U.S. 156 (1974) | 39 |
| Flast v. Cohen, 392 U.S. 83 (1968) | 27 |
| Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91 (1979) | 26, 30 |
| Harris v. McRae, 448 U.S. 297 (1980) | 39 |
| Havens Realty Corp. v. Coleman, ... U.S. ..., ... S.Ct. ..., 71 L.Ed.2d 214 (1982) | 30 |
| Johnson v. Glick, 481 F.2d 1028 (2d Cir. 1973), cert. denied, 414 U.S. 1033 (1973) | 32 |
| Juidice v. Vail, 430 U.S. 327 (1977) | 28 |

Page

K-2 Ski Co. v. Head Ski Co., 467 F.2d 1087 (9th Cir. 1972) ..... 8

Lyons v. City of Los Angeles (Lyons I), 615 F.2d 1243 (9th Cir. 1980) ..... 1, 5, 26, 29, 30, 35, 37

Lyons v. City of Los Angeles (Lyons II), 656 F.2d 417 (9th Cir. 1981) ..... 1, 4, 7, 26, 40, 41, 42

Monroe v. Pape, 365 U.S. 167 (1961), overruled on other grounds, Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978) ..... 32, 33

Murphy v. Hunt, ... U.S. ..., 50 U.S.L.W. 4264 (1982) ..... 36

O'Connor v. Board of Education, 449 U.S. 1301 (1980) (in chambers opinion) ..... 8

O'Shea v. Littleton, 414 U.S. 488 (1974) ..... ..... 5, 26, 28, 29, 30, 31, 39

Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979) ..... 28, 38

Parratt v. Taylor, 451 U.S. 527 (1981) ..... 32, 33, 40

Pasadena City Bd. of Education v. Spangler, 427 U.S. 424 (1976) ..... 43

People v. Curtis, 70 Cal.2d 347, 74 Cal.Rptr. 713, 450 P.2d 33 (1969) ..... 32

Pierson v. Ray, 386 U.S. 547 (1967) ..... 34

Polk County v. Dodson, ... U.S. ..., 102 S.Ct. 445, 70 L.Ed.2d 509 (1981) ..... 33, 34

Rizzo v. Goode, 423 U.S. 362 (1976) ..... ..... 5, 29, 30, 40, 41, 44

Rochin v. California, 342 U.S. 165 (1952) ..... 40

Rutledge v. Arizona Bd. of Regents, 660 F.2d 1345 (9th Cir. 1981) ..... 33

Page

Schmidt v. Lessard, 414 U.S. 473 (1974) ..... 43

Scruggs v. Haynes, 252 Cal.App.2d 256, 60 Cal.Rptr. 355 (1st Dist. 1967) ..... 32

Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26 (1976) ..... 27, 34

Sosna v. Iowa, 419 U.S. 393 (1975) ..... 35

Steffel v. Thompson, 415 U.S. 452 (1974) ..... 28

University of Texas v. Camenisch, 451 U.S. 390 (1981) ..... 41, 42

Valley Forge, etc. v. Americans United, etc., ... U.S. ..., 102 S.Ct. 752, 70 L.Ed.2d 700 (1982) ..... 26, 27

Warth v. Seldin, 422 U.S. 490 (1975) ..... 27, 34

Weinstein v. Bradford, 423 U.S. 147 (1975) ..... 35

Williams v. Horvath, 16 Cal.3d 834, 129 Cal.Rptr. 453, 548 P.2d 1125 (1976) ..... 33

U.S. Constitutional Provisions

Art. III ..... 26, 27

Art. III, § 2, cl. 1 ..... 2, 26

First Amendment ..... 3, 4

Fourth Amendment ..... 3

Fifth Amendment ..... 3

Eighth Amendment ..... 3, 4

Fourteenth Amendment ..... 3, 7, 33, 40

Fourteenth Amendment, § 1 ..... 2

Page

Statutes

California Penal Code (West 1970)

§ 835 ..... 32

§ 835a ..... 32

§ 843 ..... 32

Los Angeles City Charter

§ 7 ..... 2, 14

§ 20 ..... 2, 14

§ 22 ..... 2, 14

§ 70(b) ..... 3, 14

§ 73 ..... 3, 14

United States Code

28 U.S.C. § 1254(1) ..... 2

28 U.S.C. § 1331 ..... 3

28 U.S.C. § 1343 ..... 3

28 U.S.C. § 2201 ..... 28

42 U.S.C. § 1983, the Civil Rights Act of 1871 ..... 2, 3, 23, 33

Page

Rules of Court

Federal Rules of Civil Procedure
Rule 23 ..... 2, 39
Rule 23(a) ..... 39
Rule 23(b)(2) ..... 37
Rule 23(c)(1) ..... 39
Rule 65(d) ..... 2, 43
Rules of the United States District Court for the Central District of California, FEDERAL LOCAL COURT RULES 8-9 (1982)
Rule 2(g) ..... 2
Rule 2(g)(1) ..... 38
Rule 2(g)(2) ..... 38
Rule 2(g)(3) ..... 38
Rule 2(g)(7) ..... 38
Rule 2(g)(8) ..... 38

Textbooks

Brilmayer, The Jurisprudence of Article III: Perspectives on the "Case or Controversy" Requirement, 93 HARV. L. REV. 297 (1979) ..... 27
Note, Due Process and the Putative Class: The Importance of Pre-merits Certification under Fed. R. 23, Class Actions, 15 VALPARAISO L. REV. 497 (1981) ..... 37, 38
RESTATEMENT (SECOND) OF TORTS (1965) ..... 43
11 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL (1973) ..... 8

No. 81-1064

IN THE

# Supreme Court of the United States

October Term, 1981

THE CITY OF LOS ANGELES,

*Petitioner*

*v.*

ADOLPH LYONS,

*Respondent*

## BRIEF FOR THE CITY OF LOS ANGELES

### OPINIONS BELOW

The district court's order granting partial judgment on the pleadings in *Lyons I* (A. 21)[1] is not reported. The opinion of the court of appeals in *Lyons I* (Pet. App. 3a-17a) is reported at 615 F.2d 1243 (9th Cir. 1980). The district court's preliminary injunction, and findings and conclusions made in connection therewith, in *Lyons II* (Pet. App. 21a-27a) are not reported. The opinion of the court of appeals in *Lyons II* (Pet. App. 28a-30a) is reported at 656 F.2d 417 (9th Cir. 1981).

[1] "Pet. App." refers to the appendix to the petition. "A." refers to the joint appendix filed in this Court. "CR" refers to the district court clerk's records comprising part of the record on appeal in the court of appeals. "EX" refers to exhibits comprising another part of the record on appeal. "RT" refers to the reporter's transcript, which represents the remaining item in the record on appeal. "City Br. App." refers to the appendices attached to this brief.

## JURISDICTION

The judgment of the court of appeals was entered on August 17, 1981. A. 3. On September 11, 1981 that court denied the petition of the City of Los Angeles (the "City") for rehearing and its alternative motion for a stay of mandate. A. 4. On September 29, 1981 the Circuit Justice for the Ninth Circuit, Mr. Justice Rehnquist, granted the City's application for a stay of mandate pending filing and disposition of a petition for a writ of certiorari. A. 4, Pet. App. 35a. The City filed its petition on December 8, 1981, A. 4, which the Court granted on February 22, 1982. A. 4. The jurisdiction of this Court rests upon 28 U.S.C. §1254(1).

## CONSTITUTIONAL PROVISIONS, STATUTE, RULES OF COURT, AND LOCAL LAWS INVOLVED

| | |
|---|---|
| *Constitution of the United States* | |
| Article III, §2, cl. 1 | Pet. App. 1a |
| Amendment 14, §1 | Pet. App. 1a |
| *Statute* | |
| The Civil Rights Act of 1871, 42 U.S.C. §1983 | Pet. App. 1a-2a |
| *Rules of Court* | |
| Federal Rules of Civil Procedure | |
| Rule 23 | City Br. App. 1a |
| Rule 65(d) | City Br. App. 4a |
| Rules of the United States District Court for the Central District of California | |
| Rule 2(g) | City Br. App. 4a |
| *Local Laws* | |
| Charter of the City of Los Angeles | |
| §7 | City Br. App. 7a |
| §20 | City Br. App. 7a |
| §22, 1st ¶ | City Br. App. 7a |

| | |
|---|---|
| §70 (excerpt) | City Br. App. 7a |
| §73, 1st ¶ | City Br. App. 7a |

## STATEMENT

### 1. PROCEEDINGS

On February 7, 1977 the respondent commenced the within action against the City and four of its police officers[2] in the United States District Court for the Central District of California, asserting past and threatened deprivation of various constitutional rights,[3] including deprivation of "life" and "liberty" without due process of law in contravention of the Fourteenth Amendment. The action was brought under the Constitution and various civil rights acts, most notably, the Civil Rights Act of 1871, 42 U.S.C. §1983; jurisdiction was invoked under 28 U.S.C. §§1331, 1343. A. 5. The centerpiece of the complaint consisted of prayers for injunctive (count V) and declaratory (count VI) relief against the City to prohibit the LAPD from applying the bar arm and carotid control holds (the "control holds")

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[2]The issues before the Court primarily concern the availability of injunctive relief, which the respondent seeks only against the City. In his claim for damages, four Los Angeles Police Department ("LAPD") officers are now named as defendants along with the City: Robert J. Crupi, Daniel P. Hills, Scott A. Landsman, and Harold J. Gaines. See A. 23. The original complaint had named as defendants a "Doe Sandoval" and a "Doe Lloyd" in the places at which officers Landsman and Gaines are now named. See A. 5.

[3]The respondent also claimed violation of First Amendment guaranties of freedom of speech, Fourth Amendment prohibitions against unreasonable seizure, Fifth Amendment guaranties of due process of law, and Eighth Amendment prohibitions against cruel and unusual punishment. A. 6-8.

upon anyone[4] unless the subject "reasonably appears to be threatening the immediate use of deadly force." A. 9-12. Compensatory relief was also sought from the officers (count I) and the City (count II) for injuries allegedly arising out of the respondent's encounter with the officers. A. 5-7.[5]

### a. Lyons I

The district court (U.S. District Judge Robert M. Takasugi) granted the City's motion for partial judgment on the pleadings dismissing (a) claims under the First and Eighth

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[4]The action was not styled a class action. The complaint did not allege that the respondent represents anyone but himself, although there was the allegation that the control holds threaten the respondent and "others similarly situated." A. 11. The prayer for injunctive relief was not expressly confined to future treatment of the respondent. See A. 16-17. The first amended complaint, on file at the time the preliminary injunction was considered, is the same in these respects. See A. 30, 32.

Prior to the issuance of the preliminary injunction, the district court took no action to certify a class or make preliminary determinations relative to class maintenance. Neither the preliminary injunction, nor the findings and conclusions issued in connection therewith, makes any reference to class maintenance. See Pet. App. 21a-27a. But the scope of the preliminary injunction is not expressly limited to the respondent. See Pet. App. 21a-22a.

While the preliminary injunction was on appeal, the respondent moved the district court to certify a class (and to permit him to add class allegations to his complaint) consisting of "all . . . persons threatened with application [of the control holds] . . . when they do not threaten to inflict serious bodily harm." See City Br. App. 8a, 9a-10a. The certification motion was opposed by the City, and the district court stayed class proceedings pending appeal of the preliminary injunction. See City Br. App. 8a. The respondent filed a second amended complaint. City Br. App. 8a. These subsequent district court proceedings were alluded to in the court of appeals in *Lyons II*. See Appellee's Opening Br. (*Lyons II*) 20:2-9.

[5]Counts III and IV (conspiracy to deny civil rights) were dismissed on the City's motion for failure to state a cause of action. A. 1. Count VII sought a declaration that the Los Angeles City Attorney's dual responsibilities of representing the City civilly and prosecuting misdemeanors deprived the respondent of equal protection of the laws. A. 12-16.

Amendments in count II and (b) counts V, VI, and VII. A. 1, 21. Judgment was entered respecting dismissal of counts V, VI, and VII. A. 1.

The respondent appealed this judgment to the court of appeals, which affirmed dismissal of count VII (city attorney conflict of interest) but reversed dismissal of counts V (injunctive relief) and VI (declaratory relief). *Lyons v. City of Los Angeles* (*Lyons I*), 615 F.2d 1243, 1250 (1980), Pet. App. 17a. As to its ruling on the claims for injunctive and declaratory relief, the court of appeals reasoned that (a) the threat of injury to the respondent and others was more immediate than the threats considered by this Court in *O'Shea v. Littleton*, 414 U.S. 488 (1974) and *Rizzo v. Goode*, 423 U.S. 362 (1976), Pet. App. 8a-9a; (b) the intrusiveness of the relief sought was less than that at issue in *O'Shea* and *Rizzo*, Pet. App. 9a-11a; (c) the respondent had a "live and active claim" at the moment just preceding application of the control hold upon him, which was not moot due to the "strong possibility of recurrence," Pet. App. 12a-13a, and because the respondent's claim is one that is "capable of repetition, yet evading review," Pet. App. 13a-14a; and (d) there is a need for someone to have standing to challenge the control holds' legality. Pet. App. 16a-17a.

The City petitioned this Court for a writ of certiorari on June 18, 1980. A. 2. On July 22, 1980 the Circuit Justice for the Ninth Circuit, Mr. Justice Rehnquist, denied the City's application for a stay of the district court proceedings. A. 2. The Court denied the petition for a writ of certiorari on October 20, 1980, with three Justices (White, Powell, and Rehnquist) dissenting. *City of Los Angeles v. Lyons* (*Lyons I*), 449 U.S. 934, Pet. App. 18a.

### b. Lyons II

On remand, the respondent, having amended his complaint so as to delete count VII (city attorney conflict of interest) and add allegations of racially discriminatory application of the control holds (see A. 23-33 *passim*), applied for a preliminary injunction. A. 3. At the district court's request, no testimony was taken, all evidence being presented on paper by way of affidavit, deposition transcript, or government record. On December 23, 1980 the district court (U.S. District Judge Robert M. Takasugi) issued a preliminary injunction enjoining the LAPD from using the control holds "under circumstances which do not threaten death or serious bodily harm." Pet. App. 21a. The district court's order further provided that (a) the preliminary injunction would remain in effect until the court approved a new officer training program and (b) certain prescribed reporting procedures were to be followed. Pet. App. 21a-22a. Findings of fact and conclusions of law were filed. Pet. App. 23a-27a. The district court concluded that use of the control holds "as presently taught" upon persons who do not threaten death or serious bodily harm "constitutes a violation of the Fourteenth Amendment due process clause, substantive due process, and shocks the conscience of the court." Pet. App. 27a.

The City appealed the preliminary injunction to the court of appeals.[6] A brief stay was issued by the district court, A. 3, followed by a stay pending appeal granted by the court of appeals on the City's emergency motion. A. 3. On August 17, 1981 the court of appeals affirmed the preliminary injunction by a *per curiam* opinion, which was mod-

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[6]The respondent cross-appealed on Fourth and Fourteenth Amendment grounds, which the court of appeals dismissed because the issues did not arise from an appealable order or judgment. See Pet. App. 30a.

ified on August 20, 1981. *Lyons v. City of Los Angeles* (*Lyons II*), 656 F.2d 417, Pet. App. 30a. The court of appeals found no "abuse of discretion" in an order which was a "relatively innocuous interference by the judiciary with police practice" in light of (a) the continued availability of the control holds to cope with threats of serious bodily harm and (b) nine persons having died following application of the control holds "allegedly of the injuries sustained in the application of the holds." Pet. App. 29a. The City petitioned for rehearing and moved, in the alternative, for a stay of mandate pending disposition of a petition for a writ of certiorari to be filed with this Court. The petition and motion were denied on September 11, 1981. A. 4.

On September 17, 1981 the City applied to the Circuit Justice for the Ninth Circuit, Mr. Justice Rehnquist, for a stay of the court of appeals' mandate pending filing and disposition of a petition for a writ of certiorari. On that date Mr. Justice Rehnquist issued a temporary stay, A. 4, which on September 29, 1981 he continued until disposition by the Court of a timely petition for a writ of certiorari. A. 4. A memorandum opinion was filed with the order. .... U.S. ...., 102 S.Ct. 14, 69 L.Ed.2d 1015, Pet. App. 31a. On December 8, 1981 the City filed a petition for a writ of certiorari, A. 4, which the Court granted on February 22, 1982. A. 4.

## 2. FACTS

### a. The Respondent's Injury

The district court found that the respondent had been detained by LAPD officers for a traffic infraction and that during the course of the detention the officers "without provocation or legal justification, applied a Department-authorized chokehold which resulted in injuries to" the respondent. Pet. App. 23a. The respondent claimed that he urinated

and defecated on himself, gasped for air, choked, spit up blood, and injured his larynx. EX 1, 43:18-44:8.

The City argued to the district court that the respondent's version of his encounter with LAPD officers was irrelevant to the preliminary injunction proceeding as that proceeding concerned itself with LAPD policy as opposed to the conduct of individual officers. See City Br. App. 9a; City oppos. to prelim. inj. (CR 74) 45:7-16; RT 44:6-16. Consequently, the officers' version of what took place was not presented to the district court and is not part of the record.[7]

### b. Threats of Injury

The respondent's verified complaint[8] alleged that the LAPD's use of the control holds threatens injury to himself and "others similarly situated" and that he "justifiably fears that any contact he has with Los Angeles police officers may result in his being choked and strangled to death without provocation, justification, or other legal excuse." A. 11. The respondent also presented evidence that he becomes "extremely apprehensive and nervous" when he sees an LAPD police car. A. 35. The district court's findings of fact make no reference to the existence of a threat of injury

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[7]The allegations in the respondent's first amended complaint pertaining to the incident in question (paragraphs 8, 9, and 21) were denied in paragraphs 7 and 11 of the City's answer thereto. See A. 24, 28; CR 66. The parties agreed and advised the district court that the respondent's damages claim could be severed from his effort to obtain equitable relief.

[8]The first amended complaint is not verified. See A. 23-33. Unverified pleadings are not competent evidence at preliminary injunction hearings. See *K-2 Ski Co. v. Head Ski Co.*, 467 F.2d 1087, 1088 (9th Cir. 1972); see generally 11 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL §2949, at 473 n. 13 (1973); cf. *O'Connor v. Board of Education*, 449 U.S. 1301, 1302 (1980) (Mr. Justice Stevens on application to vacate stay). The allegation referred to, however, was left unchanged in the first amended complaint. See A. 30.

either to the respondent or to others. See Pet. App. 23a-26a.

### c. The Control Holds

#### (1) The Holds in the Context of Overall Use-of-Force Policy

The LAPD as a matter of policy[9] requires its officers to use only that force which is "reasonable and necessary" and the minimal force required to overcome resistance. To implement this policy, the LAPD has developed an escalation-de-escalation methodology. Officers are directed to escalate or de-escalate the level of force in response to suspects' actions. A. 229-231; EX 59, 1:23-25; A. 619 (not before district court); Pet. App. 36a-37a (not before district court).[10] This methodology consists of the following methods of control:[11]

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[9]This policy is written, being contained in the LAPD Manual, A. 228, and explained at greater length in a training bulletin. A. 619 (not before district court); Pet. App. 36a-40a (not before district court).

[10]Documents identified as "not before district court" and included in the joint appendix are listed at A. v. They were among the documents presented to the court of appeals in support of the City's emergency motion for a stay of the preliminary injunction pending appeal. This evidence was not before the district court at the time the preliminary injunction was issued.

[11]The LAPD has recently introduced two new methods of control: the "Taser" and "Chem-Shield." The Taser consists of a dart with wires connected to a battery generating about 50,000 volts. The dart immobilizes the suspect through the effect the electrical current has upon the neurological system. The Taser has been found to be most effective at a distance of about 8-10 feet, has proved effective about 80% of the time, but risks injury to the suspect from falling. EX 59, 1:28-2:25. Chem-Shield is a pressurized canister of chemical irritant liquid which generally causes temporary immobilization through eye closure, intense pain, and coughing. It has proved effective about 70% of the time, but can only be utilized at a range of about 8-10 feet. EX 59, 2:26-3:15.

| | |
|---|---|
| lowest level of force | Verbal commands |
| | Firm grip |
| | Pain compliance holds (*i.e.*, wrist locks, twist locks) |
| | Control holds (*i.e.*, modified carotid, carotid, locked carotid, bar arm, and chancery) |
| | Higher self-defense techniques (*i.e.*, baton techniques,[12] karate kicks,[13] and judo throws) |
| highest level of force | Deadly force (*i.e.*, the service revolver) |

See A. 230-231, 247; Pet. App. 38a-40a (not before district court).

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[12]These techniques employ a straight baton or a Manadnock baton. The straight baton is a wooden object approximately 15 to 18 ounces in weight, 26 inches in length, and 1¼ inches in diameter. The Manadnock is made of synthetic fiber having approximately 2½ times the density of oak, weighs approximately 27 ounces, is 24 inches long, and is 1¼ inches in diameter. It has a short handle protruding at a right angle near one end. The Manadnock has a maximum striking power of approximately 3 to 4½ times that of the straight baton.

The straight baton is used with either a striking motion or a jabbing motion. The Manadnock can be used with spinning, chopping, or punching motions, as well as striking or jabbing. Officers are taught to use full force with baton movements and to strike the resisting suspect's body below the neck. A. 231; EX 68, 186:12-187:11; EX 71, 96:20-98:11; A. 620-626 (not before district court).

[13]Karate kicks consist of three maneuvers: front kick, side kick, and rear kick. Officers executing these kicks would normally be wearing shoes or boots. They are instructed to aim their kicks below the solar plexus and above the kneecap. EX 56, 2:25-3:7; EX 71, 57:2-21, 93:6-96:19; A. 619-621 (not before district court).

**(2) Description of the Holds**

Control holds utilizing neck restraints are derived from the sport of judo, A. 95, 238, 304; EX 55, 2:8-9, and are used by most major police departments in the country.[14] They are used upon resisting, attacking (typically weaponless), or fleeing suspects when lower levels of force are not or would not be effective and when the higher self-defense techniques cannot or should not be used. A. 238; Pet. App. 41a; EX 70, 70:8-71:6; EX 72, 67:12-68:6; A. 619-620 (not before district court); Pet. App. 37a-39a (not before district court); A. 617 (not before district court). Of the control holds authorized, the LAPD emphasizes the modified carotid and carotid holds. A. 238-239; Pet. App. 41a-47a. The modified carotid is a take down technique designed to bring the subject to a sitting position where the carotid hold can generally be more easily applied. A. 239. The carotid hold is designed to encourage the subject to submit to control, but, if necessary, to render the subject unconscious. A. 239; Pet. App. 41a.

The holds can be applied when an officer is able to take a position behind the subject.[15] The officer places one arm around the subject's neck, holding the wrist of that arm with his or her other hand. The officer's chest is brought flush against the subject's back. Pressure is applied on two sides of the neck by the lower forearm and the bicep muscle. In the carotid hold, the pressure is focused by the lower forearm and bicep muscle upon the carotid arteries located on each

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[14]A survey of 60 law enforcement agencies in August, 1980 indicated that 90% authorized the carotid hold, 53.33% authorized the bar arm, and 56.67% authorized the chancery. A. 241-242, 260-261. Similar results were obtained in a 1978 City survey. See A. 53-54, 57-60; see also A. 95.

[15]The holds are described in narrative and pictorial form at Pet. App. 41a-51a.

side of the neck. The modified carotid applies lower forearm pressure to a point midway between the trachea (at the front of the neck) and one of the carotid arteries. The carotid hold is capable of rendering the subject unconscious by diminishing the flow of oxygenated blood to the brain through constriction of the carotid arteries. When the brain is sufficiently deprived of oxygen, the subject becomes unconscious. A. 304-306. Normally, unconsciousness will occur within 8-14 seconds. Pet. App. 48a; A. 324. The bar arm hold, which is de-emphasized by the LAPD, A. 238; Pet. App. 48a, is applied similarly except that the forearm pressure is applied at the front of the neck. Such pressure causes pain. Pet. App. 48a; A. 304, 324, 327. Although the evidence conflicted on this point, *compare* A. 304-305, *with* A. 364-365, the district court found that the bar arm reduces the flow of oxygen to the lungs, Pet. App. 23a, thereby presumably diminishing the oxygenicity of the blood flowing to the brain and thus causing unconsciousness. Both holds may be "locked" by deriving additional strength from the officer's other arm. These holds are the "locked carotid" and "locked bar arm" (or "chancery"). They are to be used when unlocked holds cannot control the subject. Pet. App. 46a, 51a. Officers are instructed to release the holds when the subject "stops resisting or goes limp." Pet. App. 47a. Typically, officers gain control without rendering the subject unconscious. A. 239; Pet. App. 41a. In either event, the subject may then be handcuffed and, generally, thus readily controlled.

**(3) History of the Holds**

The original control hold, introduced in 1936, was the bar arm. A. 238. In 1970 a LAPD committee (which included an orthopedic surgeon), formed to study the bar arm and other control holds, determined that the carotid hold was more effective and safer than the bar arm. A. 282. The

committee reviewed various holds, their medical aspects, practices of other law enforcement agencies, and particular dangers associated with the holds. It made training recommendations. A. 294. As a result of the committee's report, the LAPD limited emphasis of the bar arm to gaining initial control over suspects by using it primarily as a take down technique. The carotid hold was thereafter emphasized as the method for effecting complete control. EX 58, 2:25-3:26. In 1972 the LAPD published two training bulletins (A. 41-48) warning officers that the bar arm had caused injuries and, rarely, death and that certain precautions should be taken when applying it. A. 44.

In 1975 another LAPD committee studied the control holds and reaffirmed their continued use. See A. 262-277. This committee solicited the opinions of experts in medicine, police science, and the martial arts. The committee made a number of recommendations respecting training, research, and reporting and concluded that there are "no viable alternatives" to the holds and, while they risk injury to the subject, they are "nevertheless the most effective and the most humane means of establishing physical control." A. 274.

In 1978, following the death of a suspect who had a bar arm control hold applied upon him, the LAPD developed a modified carotid control hold as an alternative to the bar arm as a take down technique. The modified carotid is designed to avoid injury to the trachea. EX 57, 2:24-3:7; EX 58, 3:27-4:11; EX 68, 57:17-19, 114:23-27, 188:11-20. Unlike the carotid hold, the modified carotid can be more easily applied while the subject is standing. A. 239; EX 68, 58:4-5. Since 1978, LAPD policy on use of the bar arm hold provides that it is to be used only if the modified carotid or carotid cannot be applied or is not effective. A. 239; EX 58, 4:16-19; EX 68, 52:7-14, 58:6-9; EX 71, 101:16-23;

EX 72, 64:14-20. In 1978, the LAPD issued a new training bulletin on the control holds. See Pet. App. 41a-51a. This bulletin warned officers that certain precautions are necessary to ensure that the holds do not cause serious injury. Pet. App. 47a-48a. Also in 1978, the Los Angeles City Council, the City's popularly elected governing body, Charter of the City of Los Angeles §§7, 20, 22 (City Br. App. 7a), investigated the control holds. See A. 49. One result of this investigation was that the Board of Police Commissioners, the civilian board which controls the LAPD, Charter §70(b) (City Br. App. 7a), the members of which are appointed by a popularly elected Mayor and confirmed by the City Council, Charter §§7, 73 (City Br. App. 7a), conducted a study of the holds. See A. 50-219. The study reviewed the LAPD's efforts in exploring alternatives to and modifications of the control holds, techniques used to control persons under the influence of drugs (especially phencyclidine [PCP]), medical aspects of the holds, the practices of other law enforcement agencies (attaching a 1978 study of the control holds by the Kansas City, Missouri Police Department), and officer training. Among the Board's responses to the City Council was the conclusion that as a result of LAPD research "[t]o date, no suitable alternatives to the types of control holds utilized by the Department have been found although some modifications in training have been made as a result of this research." A. 51-52.

**(4) Officer Training**

(a) *Recruit Training*

LAPD officer recruits receive a total of 960 hours of training at the police academy, including approximately 140 hours of training in self-defense techniques. These 140 hours include 12 hours of demonstration of the control holds and additional hours devoted to practice. About 8 hours are

devoted to self-defense performance testing before a board composed of 5 members of the physical training staff. Four of the 12 trainers in the LAPD's physical training and self-defense unit at the academy are martial arts experts. Proficiency is required for graduation from the academy. A. 234-236, 298-301; EX 68, 17:11-20, 75:11-76:3, 159:13-160:17; EX 71, 19:24-20:5, 62:26-65:21, 87:2-89:26, 105:13-26, 117:8-17.

(b) *In-service Training*

Upon graduation from the police academy, an officer is on probation for 12 months and works under the direct supervision of an experienced, specially selected training officer. A probationary officer who demonstrates a lack of expertise in self-defense techniques is provided remedial instruction. A. 236. All officers receive training during the 45-minute roll card period which precedes each watch. Effective March 7, 1979, the LAPD directed that 2 such roll call sessions each month be devoted to the control holds. A. 236, 245-246; EX 68, 80:14-82:27. Each team of officers in the field is to have approximately 48 1-hour training sessions each year, covering topics related to the training needs of that specific team. Aspects of self-defense, officer safety, and use of force are the subject of many of these sessions. A. 236-237; EX 68, 94:16-95:21. All officers who by the nature of their assignments are likely to be involved in arrest situations are required to attend an annual 8-hour self-defense refresher course at the police academy, which includes review of and practical training in the control holds. A. 237; EX 68, 17:21-18:15, 95:22-97:23; EX 72, 48:28-49:28. Upon completion of 2 years of service, all officers attend an advanced course which includes 3 hours of self-defense review. A. 237; EX 68, 99:16-100:3.

Training bulletins are issued to police officers. A. 237; see, *e.g.*, A. 41, 142, 152, 247, Pet. App. 36a (not before district court), 41a. The training bulletins are designed to supplement other training. EX 68, 119:18-120:24. Certain police officers stated that to their knowledge there is no requirement that an officer receive, read, or be tested on the contents of training bulletins. A. 383; EX 68, 100:17-101:19; EX 70, 39:22-40:3.[16]

(c) *Training Review*

To determine where additional training is required, the physical training and self-defense unit at the police academy conducts retention tests. Retention testing to determine proficiency in control holds was administered in 1979. The officers tested were selected so there was a group who had been out of the academy less than 6 months, a group out from 6 months to 1 year, and a group out over 1 year. The supervisor of this training unit found that the level of retention and proficiency in the control holds was acceptable and better than most other areas taught at the police academy. EX 68, 18:16-20:10, 84:25-28.

LAPD recruits and officers are instructed on LAPD use-of-force policies relating to the control holds as described *supra* (at pp. 9-12). See A. 41, 230, 239, 241, 247, 257; Pet. App. 41a; EX 57, 3:26-4:16; EX 68, 15:6-24, 52:2-59:16, 110:14-111:28, 114:1-22, 146:8-147:14, 195:25-196:3; EX 72, 50:1-24, 52:5-27, 91:5-18. The LAPD constantly reviews its policies and training practices relating to the control holds, and as a consequence of this review

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[16]Subsequently, LAPD Chief of Police Daryl F. Gates on February 18, 1981 stated that for about the preceding year all LAPD officers had been required to take delivery personally of training bulletins. Gates Deposition (EX A to City's opposition to motion for relief from stay order in court of appeals) 41:23-42:17 (not before district court).

changes have occurred. LAPD studies have led to modification of both policies on use of the control holds and related training practices. A. 51-56, 266-268, 282, 285, 291-294. City experts found that LAPD training minimizes danger to suspects, A. 307-308, 332-335; EX 66, 138:21-140:13, while a respondent's expert concluded that the LAPD's training bulletin inadequately advises officers of the dangers associated with the control holds. A. 366.[17]

Training officers at the police academy were not aware of most of the circumstances surrounding the death of the 9 persons found by the district court to have died following application of the control holds. EX 70, 21:18-27:28, EX 71, 42:8-45:21; EX 72, 33:22-41:1. One of the training officers stated that he believed that the deputy chief in charge of training is informed of serious injuries or deaths and that such information is reflected in changes in policy or training. EX 72, 32:10-33:18. Changes in policy and training are not made by training officers, but they may recommend changes. EX 68, 98:12-15; EX 70, 90:3-8.

The evidence recited above regarding the nature and extent of training was not disputed by the respondent. The district court found that LAPD officers "are given at most two hours' instruction on the use of each of these control holds" in their academy training. Pet. App. 24a.

**(5) Reporting Practices**

The police academy receives copies of arrest and crime reports prepared by police officers who are involved in physical altercations with suspects. Officers are directed to write "altercation" on such reports and send copies to the

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[17]As will be discussed *infra*, the respondent's experts' knowledge of LAPD training appeared to be limited to a reading of a training bulletin, and they asserted that the control holds are dangerous no matter how well taught.

academy. This procedure is required whenever an officer uses any level of physical force to subdue a suspect. The purpose of this reporting procedure is to allow for review of the tactics employed by officers to determine if additional training is necessary. These reports have been required for at least 10 years. A. 240-241, 297-298; EX 42, 11:2-12:11; EX 68, 131:21-135:27; EX 72, 69:2-72:8; EX 71, 45:22-47:14. Whenever a serious injury or death occurs as a consequence of a confrontation with an officer, a special division of the LAPD conducts a detailed investigation. See, *e.g.*, A. 407-427, 433-446, 451-463, 467-481, 487-506, 513-531, 537-554.

These facts concerning the LAPD's reporting procedures were not disputed by the respondent. The district court found that the LAPD does "not now have regulations which mandate a written report of the use of such force [*i.e.*, the control holds] unless death results from the application thereof." Pet. App. 24a.

**(6) Risks of Injury or Death**

The LAPD has recognized since at least 1970 that the control holds have a potential for causing serious injury or even death; they are not failsafe. See A. 41-48, 51-56, 262-275, 280-294; Pet. App. 47a-51a; see also A. 300-301. The parties presented to the district court the varied opinions of medical, martial arts, and police science experts concerning the likelihood of injury or death. While these opinions differed in many respects, there was a consensus that the bar arm hold is more dangerous than the carotid hold.

The respondent's experts concluded that the major danger of the bar arm hold is injury to the organs in the front of the neck, A. 357-358, 363-367, 369-371, which coincided with the view of the City's experts. A. 305-309, 331-335; EX 52, 3:17-4:2. One of the respondent's experts, Dr. Alex

Griswold, found that the bar arm hold involved an "unpredictably high risk of death," A. 366;[18] another, Dr. Richard H. Fine, concluded that the hold is "particularly dangerous," A. 357;[19] and a third, Bruce Tegner, opined that it constitutes "deadly force that involves a high risk of fatality." A. 371.[20] The City's experts agreed that the bar arm hold presents some risk of death, particularly if excessive pressure is applied. A. 68, 305, 308, 334, 353-355, 395-397; EX 52, 3:19-4:2; EX 55, 2:23-3:2; EX 56, 3:15-26; EX 57, 3:15-19; EX 73, 29:9-16, 35:8-25, 39:18-40:2, 46:11-47:20, 49:5-27, 61:15-62:15; EX 74, 38:4-39:12; EX 66, 140:3-12, 155:15-156:13.

Dr. Fine concluded that the carotid artery control hold is "particularly dangerous," and Dr. Griswold stated that it involves an "unpredictably high risk of death." A. 357, 367.[21] The City's experts agreed with a respondent's expert,

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[18]Dr. Griswold had observed approximately 30 applications of the bar arm or carotid holds by LAPD officers while working at Los Angeles receiving hospitals and had never seen the holds result in death or serious injury. He had only seen them applied "with good safe results." While working as a pathologist at the Los Angeles County coroner's office from 1950 to 1963, Dr. Griswold had never seen a death that he could ascribe to the bar arm hold. He had not visited the LAPD police academy to observe officer training. EX 61, 13:5-19:4, 21:4-23:27, 63:2-65:17, 86:3-87:3.

[19]Dr. Fine had never observed an LAPD officer apply the hold. His experience was limited to a bar arm control hold not permitted by the LAPD. On the several occasions in which he had seen such a bar arm hold applied, death did not result. Dr. Fine's only familiarity with LAPD training in the control holds was from an outdated training bulletin. The only medical literature he relied on was Dr. Griswold's declaration. EX 62, 7:4-9:19, 16:24-17:6, 20:3-24; A. 232.

[20]Mr. Tegner defined high risk as "anything from a bruise up to death" and deadly force as "any injury up to and including a fatality." EX 63, 13:23-25, 56:20-58:6.

[21]Dr. Fine had never seen a carotid hold applied by anyone. EX 62, 7:19-28. Dr. Griswold had not seen a carotid hold applied for 5 to 6 years and as a pathologist had never seen a death he could attribute to the carotid hold. He had only seen it applied "with good safe results." EX 61, 42:19-43:3, 63:2-65:17.

Mr. Tegner, that the carotid hold usually should not result in serious injury or death. However, the carotid hold is more difficult to apply than the bar arm, and in certain circumstances the bar arm can be applied when the carotid cannot. A. 70, 239, 303-307, 332-334; EX 55, 2:6-3:10; EX 52, 6:7-8:2; EX 56, 2:20-25; EX 57, 2:24-3:12; EX 63, 18:18-19:4, 24:21-25:22, 60:18-62:12; EX 66, 173:17-24.

The City presented evidence that the carotid and bar arm holds were used by LAPD officers at least 975 times between February 1, 1979 and July 31, 1980. A. 240-241, 259.[22] The respondent presented evidence that during this period 3 persons died following application of the holds. A. 555-556, 561-564, 568-569. The respondent also presented evidence that from May 27, 1975 to June 17, 1980, 9 persons died following use of the holds, only 1 of whom was initially a traffic detainee. Each of the 9 decedents displayed erratic and violent behavior. The coroner's records indicate that 5 of the 9 had alcohol or other mind-altering drugs in their bloodstream and that in 3 other cases drug usage was suspected. The City contested the respondent's contention that the holds caused these deaths. See A. 331-333, 407-568; EX 65, 20:14-22:23, 27:27-29:26; EX 73, 55:7-9, 64:27-66:21; EX 74, 5:1-28, 6:20-9:10, 33:10-34:1. The district court found that there is a "high

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[22]The LAPD last year reported that during the first quarter of 1981, 52,162 arrests were made, 212 altercation reports were filed, and the control holds were applied 138 times. *Report on Upper Body Control Holds* 9 (October 6, 1981). See City Br. App. 11a.

likelihood that these fatalities were caused by misapplication of the subject holds." Pet. App. 25a.[23]

**(7) Alternatives to the Control Holds**

The availability of the control holds relegates the baton and karate kicks to situations where officers are threatened with serious bodily injury. A. 617 (not before district court), 619-621 (not before district court); EX 71, 93:17-94:18. Without the control holds, officers faced with forceful resistance, which does not constitute a threat of serious bodily injury or death, will of necessity resort to the baton and karate kick techniques if lower levels of force are not or would not be effective. A. 617 (not before district court); 619-620 (not before district court); EX 68, 176:18-22.

The baton can break bones, sever blood vessels, rupture internal organs, and cause heart attacks. A. 167, 179, 619-620 (not before district court); 623-626 (not before district court); EX 52, 5:25-6:5; EX 56, 3:19-26; EX 62, 41:5-45:3; EX 63, 38:23-39:23; EX 68, 93:14-18, 186:12-187:11; EX 71, 96:23-98:11, 108:4-110:12, 117:28-118:12; EX 72, 75:5-27, 92:21-93:9; EX 73, 70:27-71:14; EX 74, 41:18-

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[23]In 2 of the 9 deaths the coroner's reports did not ascribe death to a control hold. In the case of Robert Cameron, the coroner ascribed death to "hypoxic encephalopathy due to respiratory arrest, following struggle with police officers while in state of acute ethanol and cocaine intoxication." A. 568. The LAPD report concerning Mr. Cameron's death indicated that a violent struggle occurred during which an officer struck Mr. Cameron in the face with his fist, the officer and Mr. Cameron fell to the ground, and, while the carotid hold was applied, Mr. Cameron was not rendered unconscious. Mr. Cameron was handcuffed but continued to struggle. Leg restraints were then applied. A. 565-567. In the case of Larry Morris, the coroner ascribed death to "cardiac arrest during physical altercation due to or as a consequence of arteriosclerotic heart disease and blunt force injuries to neck and soft tissues." A. 562. An initial LAPD press release indicated that during Mr. Morris' struggle with police officers, the officers utilized their batons and on several occasions unsuccessfully attempted to apply a carotid control hold. A. 557-559.

45:22, 59:13-61:14. Most experts believe that the baton is generally more dangerous than the control holds. See, e.g., A. 83. But the baton cannot be used at close quarters, A. 620 (not before district court); EX 55, 3:10-12; EX 57, 3:22-25; EX 71, 97:15-23, and is not available to the officer in plainclothes. A. 620-621 (not before district court). Karate kicks can also cause substantial physical trauma, EX 56, 3:1-9; EX 71, 93:6-96:15; EX 72, 92:21-93:4, but they require extensive training and practice, and many officers are thus not sufficiently proficient to use them effectively. They cannot be used at close quarters. A. 621 (not before district court); EX 57, 3:22-25; EX 71, 96:5-19, 108:11-109:17.

The LAPD continuously reviews, and its periodic studies have addressed, other use-of-force techniques and devices designed to overcome physical resistance and attack. The 1975 LAPD study, for example, noted that alternative measures (including variations of the control holds) require considerable expertise before they can be applied. "Several would probably produce more serious injury, and officer safety would be further jeopardized due to unwise variations of body positioning." A. 271. That study was unable to find any "viable" alternatives, A. 275, while the 1978 LAPD study could not identify any "suitable" alternatives. A. 51. Alternative techniques and devices are rejected where it is thought that they will unduly jeopardize the well-being of suspects and officers or cannot be taught in a reasonable period of time. See A. 221-225; see also A. 96-97. Thus, for example, the karate punch to the throat, while not taking long to teach, has been rejected by the LAPD because it is thought to be unduly dangerous to the suspect. EX 68, 62:2-65:12, 67:1-69:16. While the LAPD has recently adopted the Taser and Chem-Shield, these devices cannot be used in all circumstances where the control holds

can be applied. Neither can be used at close quarters, and neither is always effective. A. 83-84; EX 59, 1:28-2:2, 2:19-3:15.

## SUMMARY OF ARGUMENT

1. The respondent lacks the standing necessary to seek injunctive or declaratory relief on behalf of himself or others because (a) a "case or controversy" for equitable relief does not exist between himself and the City, (b) there is an otherwise inadequate basis for equitable relief, and (c) he represents only himself.

a. Standing subsumes both constitutional requirements and prudential considerations and requires at a minimum that a plaintiff have suffered or be threatened with injury which fairly can be traced to the defendant's past or prospective conduct. The standing requirement is conducive to a realistic appreciation of the consequences of judicial action. Standing to obtain injunctive relief requires a realistic threat of injury. In the instant case, the threat to the respondent that he will again be subjected to the control holds is remote and speculative, as it presupposes not only that he will have another encounter with LAPD officers, but also, that an altercation will ensue and a control hold will be applied upon him. The respondent's subjective fear that the holds may again be applied upon him is not evidence sufficient to establish the kind of threat upon which an injunction must be based.

b. There is an otherwise inadequate basis for equitable relief. The respondent has an adequate remedy for damages, under either or both California tort law or the Civil Rights Act of 1871, 42 U.S.C. §1983. The adequacy of a damages remedy is also the primary reason for rejecting the argument that the respondent was threatened just prior to the application of the hold upon him and that the present mootness

of such threat does not detract from its justiciability under doctrinal exceptions to mootness where (1) the defendant has voluntarily ceased the conduct, but has failed to dispel a reasonable expectation that the conduct will be repeated, and (2) the defendant's conduct is capable of repetition, yet evading review. Neither exception applies here.

c. Since the respondent represents only himself, the preliminary injunction erroneously has class-wide scope. The case was not brought as a class action, and no class has been identified or certified. It was error under these circumstances for the district court to address the merits, by issuance of a preliminary injunction, prior to addressing class issues. The respondent cannot enhance his standing through class proceedings.

2.a. The preliminary injunction at issue represents a substantial displacement of municipal authority by the federal judiciary in its modification of LAPD policies concerning the control holds and its control of LAPD training and reporting practices. Should the preliminary injunction go into effect, the district court will have interjected itself to a significant extent into the day-to-day peacekeeping activities of a municipal police department. This impending intrusion into the workings of the LAPD is not justified by the most extraordinary circumstances required by principles of federalism.

b. The preliminary injunction itself is vague in its use of the expression "serious bodily harm" and seems to be prohibiting use of the holds in situations where they should be used, while permitting them in situations where they should not be used. Such vagueness runs an unnecessary risk of contempt proceedings against officers endeavoring to comply with the court's order. The preliminary injunction rests on two erroneous factual determinations respecting

risks of death or injury associated with the holds and the extent of LAPD training in the holds.

c. Federal judicial administration of local government is reserved for rogue governments — governments which by their conduct have consistently and unmistakably given notice that they cannot be trusted to perform their responsibilities without trampling civil liberties underfoot. Neither the City nor its police department has behaved in such a manner. On the contrary, the record establishes that the City's conduct has been eminently reasonable. The Constitution requires no more.

## ARGUMENT

### I.

### THE RESPONDENT LACKS STANDING TO SEEK INJUNCTIVE OR DECLARATORY RELIEF

The respondent lacks the standing necessary to seek injunctive or declaratory relief on behalf of himself or others because (a) a "case or controversy" for equitable relief does not exist between himself and the City, (b) there is an otherwise inadequate basis for equitable relief, and (c) he represents only himself. In *Lyons I* the court of appeals concluded that the respondent did have standing to bring this action, and the preliminary injunction at issue in *Lyons II* rests, in part, upon that determination. The court of appeals' decision in *Lyons I*, however, directly conflicts with decisions of this Court.

### A. A "Case or Controversy" for Equitable Relief Does Not Exist

#### 1. Fundamental Principles

The Court has recently stated that standing "subsumes a blend of constitutional requirements and prudential considerations." *Valley Forge, etc. v. Americans United, etc.*, .... U.S. ...., 102 S.Ct. 752, 758, 70 L.Ed.2d 700 (1982) ("*Valley Forge*"). The constitutional requirement derives from the limitation of the federal judiciary's jurisdiction to "cases" and "controversies" in Art. III, §2, cl. 1 and has been termed "bedrock," *Valley Forge*, 102 S.Ct. at 758, and "threshold." *O'Shea v. Littleton*, 414 U.S. 488, 493 (1974). Art. III requires that at an "irreducible minimum," *Valley Forge*, 102 S.Ct. at 758, a plaintiff have suffered some "actual or threatened injury" as a result of the defendant's conduct, *id., quoting Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 99 (1979), which injury "fairly can be traced" to such conduct and is "likely to be

redressed by a favorable decision." *Valley Forge*, 102 S.Ct. at 758, *quoting Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 38, 41 (1976). Among the prudential limitations imposed by the Court on its jurisdiction is its inclination to refrain from deciding " 'abstract questions of public significance' which amount to 'generalized grievances,' pervasively shared and most appropriately addressed in the representative branches." *Valley Forge*, 102 S.Ct. at 760, *quoting Warth v. Seldin*, 422 U.S. 490, 499-500 (1975).

The Court in *Valley Forge* articulated the "implicit policies," *Flast v. Cohen*, 392 U.S. 83, 96 (1968), embodied in Art. III's standing requirement:

1. Resolving legal questions in a "concrete factual context" is "conducive to a realistic appreciation of the consequences of judicial action." *Valley Forge*, 102 S.Ct. at 758. While requiring that a plaintiff have a "personal stake in the outcome" assures "that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult questions," *Baker v. Carr*, 369 U.S. 186, 204 (1962), the standing requirement also serves to protect the courts from being misled as to the consequences of their decisions to the extent that plaintiffs truly have to live with the consequences.

Other policies fostered by the standing requirement are:

2. The linkage of decisions with particular factual settings permit courts to avoid painting with too broad a brush. See *Valley Forge*, 102 S.Ct. at 758.

3. It "reflects a due regard for the autonomy of those persons likely to be most directly affected by a judicial order." *Id.* at 759; see Brilmayer, *The Jurisprudence of Article III: Perspectives on the "Case or Controversy" Requirement*, 93 HARV. L. REV. 297, 304-315 (1979). Professor Brilmayer there observes that such judicial restraint

(a) enhances the extent to which citizens decide things for themselves, (b) avoids unnecessarily tieing the hands of subsequent courts through the doctrine of *stare decisis*, and (c) serves to protect the due process rights of absent persons whose interests could be affected through the doctrines of *res judicata* (in class actions) and *stare decisis*.[24]

**2. Standing to Obtain Injunctive Relief**

Perceived threat of injury is presumably the impetus behind a plaintiff's efforts to seek injunctive relief. Standing to obtain such relief requires existence of a threat, *O'Shea v. Littleton, supra*, 414 U.S. at 493, which must put the plaintiff immediately in danger of sustaining some direct injury, *id.* at 494, must pose a "realistic danger," *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979), and not be based on "speculative conjectures." *Juidice v. Vail*, 430 U.S. 327, 333 n. 9 (1977). Thus, the threat cannot be "abstract," conjectural, or hypothetical; but rather, must be real and immediate.[25] *O'Shea v. Littleton, supra*, 414 U.S. at 494. Having suffered injury thus does not alone confer the standing requisite to obtaining an injunction. *Id.* at 495-496.

In *O'Shea* the Court believed that it would be taken into the "area of speculation and conjecture," *id.* at 497, had it permitted certain plaintiffs to challenge an allegedly discriminatory criminal justice system where they would be subjected to it only if they violated unchallenged laws *and* only if they were charged, held to answer, and tried. *Id.* There was no allegation of either an intention to violate such laws or of an expectation or threat of prosecution. *Id.* at 497-498.

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[24]The possibility of "offensive" collateral estoppel by subsequent plaintiffs against the original defendant, brought about by *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979), may present yet another reason why the plaintiff in the original action should have a personal stake therein.

[25]Less immediate (but no less genuine) threats will suffice for declaratory relief, both under Art. III and the "case of actual controversy" requirement of the Federal Declaratory Judgment Act, 28 U.S.C. §2201. See *Ashcroft v. Mattis*, 431 U.S. 171, 172 & n. 2 (1977); *Steffel v.*

"Even more attenuated" threats of injury were perceived by the Court in *Rizzo v. Goode*, 423 U.S. 362, 372 (1976), where plaintiffs were not permitted to challenge the adequacy of the disciplinary system of a municipal police department. The Court stated that the real "case or controversy" was between the plaintiffs and a small minority of unnamed, unidentified police officers whose conduct was presumably affected by their perception of the disciplinary system. *Id.*

The attempt by the court of appeals in *Lyons I* to distinguish *O'Shea* and *Rizzo* on this issue fails. Central to the court's reasoning is the following passage:

> "To be subject to these strangleholds, *a citizen need only be stopped* for a minor traffic violation while driving an automobile, as shown by the alleged facts in this case. The use of the stranglehold is accepted police practice, even in non life-threatening situations. It is not farfetched to suggest that especially in a city like Los Angeles, where many motorists drive long distances daily, the *chances of being stopped* by a policeman for an alleged motor vehicle violation are fairly good."

615 F.2d at 1246, Pet. App. 9a (emphasis added). *Lyons I* was limited to the allegations in the complaint. The court of appeals may well have read the complaint as alleging routine police application of the holds upon *all* persons stopped for traffic violations. The City submits that such a reading is erroneous[26] and that this case may have suffered

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[26]The respondent alleged that a hold was applied upon him "without provocation, legal justification or excuse," A. 6, and that he "offered no resistance or threat." A. 10. He did not allege that such was the policy or practice of the LAPD that he was attacking. Rather, he characterized the policy and practice as authorization of the use of the holds in situations where officers are "threatened by far less than deadly force," A. 10, and alleged that they are routinely applied "in innumerable situations where [police officers] are not threatened by the use of any deadly force whatsoever." A. 10. The respondent, therefore, was not alleging that the holds are automatically applied upon traffic detainees; but rather, that they are applied upon persons threatening non-deadly force upon LAPD officers.

because of it.[27] A correct reading of the complaint, however, allows only for the conclusion that *Lyons I* cannot be reconciled with *O'Shea* and *Rizzo*. If something more than traffic detention is necessary to prompt LAPD's application of the holds (*e.g.*, substantial physical resistance), then the probability that the respondent or any other traffic detainee will be subjected to the holds becomes as remote as the probabilities pondered in *O'Shea* and *Rizzo*.

In any event, this case moved beyond the pleadings stage of *Lyons I* upon the respondent's application for a preliminary injunction. At that point his standing turned on evidence of threats of injury before the district court. He did not attempt to prove the inherently implausible proposition that the control holds are routinely applied upon all traffic detainees, and the district court made no such finding. Rather, it found that the LAPD authorizes the holds "under circumstances where no one is threatened by death or grievous bodily harm" and that the respondent seeks "to restrict the use of such holds only in [sic (to?)] situations where an individual is threatened by death or serious bodily harm." Pet. App. 24a.

The only evidence respecting threats to himself that the respondent presented consisted of (a) his verified allegation

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[27]Mr. Justice Powell for the Court observed that standing is "generally a matter dealt with at the earliest stages of litigation, usually on the pleadings" and that it "sometimes remains to be seen whether the factual allegations" will be proved. *Gladstone, Realtors v. Village of Bellwood, supra*, 441 U.S. at 115 n. 31. More recently, Mr. Justice Powell has expressed the concern that "meaningless" and "lax" pleading "threatens to trivialize" the constitutional requirement of standing. *Havens Realty Corp. v. Coleman*, .... U.S. ...., .... S.Ct. ...., 71 L.Ed.2d 214, 231-233 (1982) (concurring opinion). The problems alluded to by Mr. Justice Powell are fully demonstrated by the court of appeals' possible reading of the complaint as alleging the inherently implausible police practice of applying the control holds upon all persons stopped for traffic violations. In the language of Mr. Justice Powell, the "result is more than a little absurd. . . ." *Id.* at 232.

that he "fears" that "any contact" with LAPD officers "may result" in application of the holds upon him, A. 11, and (b) his remark that he becomes "extremely apprehensive and nervous" upon sighting an LAPD police car. A. 35. The district court made no finding respecting any threat to the respondent. See Pet. App. 23a-27a. These meager facts fall considerably short of making out a "case or controversy" to support issuance of a preliminary injunction.

## B. There Is an Otherwise Inadequate Basis for Equitable Relief

Closely allied with Article III's "case or controversy" requirement are certain doctrines established by equity jurisprudence that determine the propriety of injunctive relief.[28] Among these "basic requisites" of equitable relief where principles of federalism are at stake are (a) the "likelihood of substantial and immediate irreparable injury" and (b) the "inadequacy of remedies at law." *O'Shea v. Littleton, supra*, 414 U.S. at 502. For reasons already set forth, the respondent has failed to meet the first requirement. Nor can he satisfy the second.

### 1. The Respondent Has a Damages Remedy

Should the respondent be injured in an encounter with LAPD officers, he will have an adequate damages remedy. Absent a change in the law, such remedy will be that available to him to redress his alleged injuries in the instant case. The precise nature of the respondent's damages remedy in the instant case will turn upon the facts established at trial. If it is assumed *arguendo* that the facts preliminarily determined will be found at trial, the respondent will have

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[28] In *O'Shea* the Court stated that "case or controversy" concerns "obviously shade" into those determining whether there is a "sound basis" for equitable relief. 414 U.S. at 499.

proved a clear-cut case of excessive force. The district court found that LAPD officers applied a control hold upon him "without provocation or legal justification." Pet. App. 23a.

On such facts the respondent has an adequate remedy for damages under California law. By state statute police officers in California may use only "reasonable force" in making arrests, preventing escape, or overcoming resistance. California Penal Code §§835, 835a, 843 (West 1970); see *People v. Curtis*, 70 Cal.2d 347, 356-357, 74 Cal.Rptr. 713, 450 P.2d 33 (1969). If the amount of force is "unreasonable," police officers in California are liable in tort and their employing governments are vicariously liable. *Scruggs v. Haynes*, 252 Cal.App.2d 256, 264, 267-268, 60 Cal.Rptr. 355 (1st Dist. 1967) (construing sovereign immunity statute).[29]

Whether the respondent has an action for damages on these facts under federal law is not certain. Prior to the Court's decision in *Parratt v. Taylor*, 451 U.S. 527 (1981), it was clear that excessive force by police officers at some point reached constitutional dimension. *Monroe v. Pape*, 365 U.S. 167, 172 (1961), *overruled on other grounds, Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 663 (1978); *Johnson v. Glick*, 481 F.2d 1028, 1032 (2d Cir. 1973), *cert. denied*, 414 U.S. 1033 (1973). Damages against the officers would be the ordinary remedy, *Davis v. Passman*, 442 U.S. 228, 245 (1979), with "compensation" as its object. *Carey v. Piphus*, 435 U.S. 247, 254-255 (1978). While the municipality would not be vi-

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[29]That respondent has not invoked the pendent jurisdiction of the district court by pleading a claim under California law, coupled with his willingness to sever and postpone litigation of his claim for damages, serves to demonstrate that the evident *raison d'etre* of this case is the respondent's desire to change LAPD tactics rather than a wish to be made whole.

cariously liable under §1983, *Monell v. New York City Dept. of Social Services, supra*, 436 U.S. at 691, it would be so liable under California law. *Williams v. Horvath*, 16 Cal.3d 834, 848, 129 Cal.Rptr. 453, 548 P.2d 1125 (1976). But *Parratt* seems to suggest that if California tort remedies are adequate, redress under §1983 is unavailable. At least this is the interpretation given by the court below in another case. *Rutledge v. Arizona Bd. of Regents*, 660 F.2d 1345, 1352 (9th Cir. 1981). That court read *Parratt* as transforming a claimed deprivation of "liberty" without due process of law, guaranteed by the Fourteenth Amendment and actionable under §1983, into an inquiry into the adequacy of state tort remedies. Inasmuch as there is no reason to believe that California tort remedies are inadequate, the respondent may not have a viable claim under §1983. In any event, on the assumed facts at a minimum the respondent has an adequate damages remedy under California law *or* §1983.

While the respondent has a damages remedy against the officers on these assumed facts, there is reason to question his standing to challenge the control holds on a *Monell* theory via his damages claim. As noted, the respondent asserted and the district court found that the respondent gave the officers no cause to apply a control hold upon him. Indeed, the respondent's version of his encounter with the officers would indicate that they had no cause to apply any level of force upon him. The respondent has not (and on the record cannot) establish an LAPD policy or custom authorizing or tolerating the application of force upon persons in no need of control. For a municipality to be liable under §1983, policy, custom, or other official conduct must "cause" the injury. *Monell v. New York City Dept. of Social Services, supra*, 436 U.S. at 692, 694. Such official conduct must be the "moving force" behind the constitutional violation. *Polk County v. Dodson*, .... U.S. ...., 102 S.Ct.

445, 454, 70 L.Ed.2d 509 (1981). Standing to challenge such official conduct requires that the respondent's injury "fairly can be traced" to it, *Simon v. Eastern Ky. Welfare Rights Org., supra*, 426 U.S. at 41, or that there is a "substantial likelihood" that the official conduct caused the injury. *Duke Power Co. v. Carolina Env. Study Group*, 438 U.S. 59, 75 n. 20 (1978). While the respondent need not necessarily demonstrate that the LAPD policy was a "but for" cause of his injury for standing purposes, *id.* at 77-78, though he might have to do so in order to prevail on the merits, he alternatively would have to show that "prospective relief will remove the harm." *Warth v. Seldin, supra*, 422 U.S. at 505; see *Simon v. Eastern Ky. Welfare Rights Org., supra*, 426 U.S. at 44-45.

Removing the control holds from the repertoire of LAPD police tactics will not deal with the respondent's fear that LAPD officers will use excessive force. On the facts preliminarily determined, other means of force could have been used; that a control hold was applied can only be relevant to the issue of damages. Ironically, the respondent's standing to challenge the legality of the control holds in his damages claim requires that he be disbelieved at trial. If we assume, *arguendo*, that after trial it is determined that he gave the officers no cause to apply any force upon him, the risks inherent in the control holds were not the "moving force" behind his constitutional deprivation. If, on the other hand, it is determined that the officers had cause to apply a level of force approximating that of the control holds, the officers will be absolved of responsibility via their qualified immunity (reasonable good faith) defense, *Pierson v. Ray*, 386 U.S. 547, 557 (1967), and only then will LAPD policy become an issue.

**2. A Justiciable Threat Did Not Exist Just Prior to Application of the Hold**

The adequacy of a damages award to the respondent for any injury he may have unlawfully suffered is the primary reason for rejecting the alternative view of the respondent's standing to obtain injunctive relief advanced by the court of appeals in *Lyons I*. That court posited the existence of a threat to the respondent just prior to application of the control hold upon him and dealt with the present mootness of this threat by means of certain doctrinal exceptions to mootness. Pet. App. 12a-15a. The two doctrines in question allow for justiciability of otherwise moot claims where (1) a defendant has voluntarily ceased the conduct complained of, but has failed to demonstrate the absence of a reasonable expectation that the conduct will be repeated, and (2) the defendant's conduct is capable of repetition, yet evading review. The first doctrine is clearly inapplicable, since the conduct of the City has not changed so as to avoid issuance of an injunction. Conspicuously absent from the court of appeals' handling of the second doctrine is reference to *Weinstein v. Bradford*, 423 U.S. 147 (1975), wherein the Court stated, with reference to *Sosna v. Iowa*, 419 U.S. 393 (1975):

> "*Sosna* decided that in the absence of a class action, the 'capable of repetition, yet evading review' doctrine was limited to the situation where two elements combined: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again."

423 U.S. at 149. More recently, the Court has stated that it "has never held that a mere physical or theoretical possibility was sufficient to satisfy the test stated in *Weinstein*.

*If this were true, virtually any matter of short duration would be reviewable.* Rather, we have said that there must be a 'reasonable expectation' or a 'demonstrated probability' that the same controversy will recur involving the same complaining party." *Murphy v. Hunt*, ... U.S. ..., 50 U.S.L.W. 4264, 4265 (1982) (emphasis added). There is no factual basis for recognizing either a "reasonable expectation" or a "demonstrated probability" that the respondent will again be subjected to the control holds. Finally, the doctrinal exceptions to mootness address circumstances wherein damages awarded after the fact would appear to be an inadequate remedy (*e.g.*, in the election context). As Mr. Justice White pointed out in dissenting from the denial of certiorari in *Lyons I*, the respondent has a damages remedy. 449 U.S. at 935 n.1, Pet. App. 19a.

### C. The Respondent Represents Only Himself

#### 1. Class Relief Was Inappropriate

When the preliminary injunction issued, the respondent's complaint contained no class allegations, and no class had been certified in the case. (There is a subsequent class certification motion stayed in the district court.) The district court made no preliminary or conditional class determinations prior to or at the time of issuing the preliminary injunction. The preliminary injunction on its face, however, applies to LAPD conduct generally, as it is not expressly limited to the respondent. While an injunction protecting only the respondent would be essentially meaningless and while the City does not claim surprise from the lack of certification (having long treated the case as if it *could* have broad impact), the district court nonetheless had jurisdiction to issue an injunction protecting no one but the respondent. A putative class representative and his or her attorney do not and cannot represent the interests of others absent class

identification and certification. *Baxter v. Palmigiano*, 425 U.S. 308, 310 n.1 (1976) (district court treated case as class action but did not identify or certify the class). It necessarily follows that where the action is not brought as a class action, class relief cannot be given.

**2. Class Certification Proceedings Should Have Preceded Consideration of the Preliminary Injunction**

Even where the action is brought as a class action, preliminary injunctive relief should not be granted prior to class certification.[30] Pre-merits class certification serves a number of beneficent purposes in a Fed. R. Civ. P. 23(b)(2) class action: (1) it protects the due process rights of absentee class members by "ensuring that the court has assessed the adequacy of representation," Note, *Due Process and the Putative Class: The Importance of Pre-merits Certification under Fed. R. 23, Class Actions*, 15 VALPARAISO L. REV. 497, 498-499 (1981), (2) it facilitates settlement negotiations by establishing the "contours of the lawsuit by defining the class," *id.* at 498, (3) it permits the defendant to assess what is at stake relative to its policies and procedures and

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[30]The respondent's capacity to bring a representative action was challenged by the City in *Lyons I*, both in the district court, see, *e.g.*, the City's answer 6:9-12 (CR 91), and in the court of appeals. See Respondent's Br. (*Lyons I*) 10. As pointed out by the respondent, however, Br. in Opp. Cert. 23, alternative arguments advanced by the City in the district court, in opposing the respondent's motion for class certification *while the preliminary injunction was on appeal*, were that class certification was "premature" and "unnecessary." Other arguments advanced by the City were that the respondent's pleadings were inadequate as to class action matters and that several prerequisites to a class proceeding had not and could not be maintained by the respondent. See City Br. App. 9a. The City now believes that the alternative arguments were amiss, and it again adheres to its original position. In any event, the City's change of position, because it came so late in the proceedings, did not significantly affect the proceedings and in no way prejudiced the respondent.

costs associated with modification thereof, *id.* at 501[31], and (4) it discourages judge-shopping. An adverse ruling in an individual action is not a binding adjudication upon absent class members because they are not parties. Realizing that class certification will ultimately lead to a binding determination of the merits for all class members, a putative class representative generally would prefer to postpone class matters until after a preliminary view of the merits is expressed by the court. Denial of a preliminary injunction, for example, may thus induce a putative class representative not to seek class certification and to have another class representative file another action hoping that a different judge[32] will express a more positive view of the merits. Conversely, as may have occurred in the instant case, the

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[31]The potential for the offensive use of collateral estoppel under *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979), somewhat diminishes the significance of class certification, but the uncertain availability of the doctrine in subsequent litigation counsels that the *res judicata* impact of class certification retains great significance. See Note, *Due Process and the Putative Class: The Importance of Pre-Merits Certification under Fed. R. 23, Class Actions*, 15 VALPARAISO L. REV. 497, 505 (1981).

[32]The likelihood of this taking place depends in part upon the rules and practices of the district court in question. A rule of the district court here involved places duties upon the court clerk and counsel to bring to the affected judges' attention newly filed cases, which, in view of the subject matter of earlier cases, concern similar facts, issues of law, or otherwise would "entail substantial duplication of labor if heard by different judges." Rule 2(g)(1), (2), (7) of the Rules of the United States District Court for the Central District of California, FEDERAL LOCAL COURT RULES, *Cal.* 8-9 (1982). Under this rule are to be transferred, to the judge assigned the case bearing the lowest court number, cases "which should, to avoid unnecessary duplication of judicial effort, be heard by the same judge." Rule 2(g)(3). The rule specifically prohibits dismissal of actions followed by re-filing "for the purpose of obtaining a different judge." Rule 2(g)(8). Where such a mechanism promotive of judicial economy exists, judge-shopping is no doubt inhibited to some extent.

grant of a preliminary injunction may encourage a putative class representative to pursue class treatment.[33]

### 3. Class Proceedings Could Not Enhance the Respondent's Standing

The respondent's standing in no way depends on class certification proceedings. In *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974), the Court held that if a putative class representative fails to establish the requisite case or controversy with the defendant, he may not "seek relief on behalf of himself or any other member of the class." (Footnote omitted.) The decision in *O'Shea* required dismissal of the action for want of standing prior to class certification. Nor can the putative class representative derive standing from other putative class members. *Harris v. McRae*, 448 U.S. 297, 320 n. 23 (1980). "Standing cannot be acquired through the back door of a class action." *Allee v. Medrano*, 416 U.S. 802, 829 (1974) (concurring and dissenting opinion of Chief Justice Burger).

The typicality requirement of Fed. R. Civ. P. 23(a) raises an issue distinct from standing. The inquiry turns from whether the putative class representative has been injured (or is threatened with injury) to whether he or she is "part of the class" and possesses the same interest and suffers the same injury (or threat) as the putative class members. *East Texas Motor Freight v. Rodriguez*, 431 U.S. 395, 403 (1977); see *Bailey v. Patterson*, 369 U.S. 31, 32-33 (1962).

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[33]In *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-178 (1974), the Court determined that Fed. R. Civ. P. 23 does not permit a preliminary inquiry into the merits for the purpose of determining whether an action can be maintained as a class action. Rule 23(c)(1) requires the district court to determine whether a suit denominated a class action may be so maintained as soon as practicable after its commencement. A pre-certification inquiry into the merits was held impermissibly to allow a class representative to "secure the benefits of a class action without first satisfying the requirements for it." *Id.* at 177.

Hence, if the respondent does not have standing, there is no need to consider whether his circumstance typifies those of whom he would represent.

## II.

## THE COURT OF APPEALS' DECISION IN LYONS II IS ANTITHETICAL TO PRINCIPLES OF FEDERALISM AND EQUITY ESTABLISHED BY THIS COURT

In *Rizzo v. Goode*, 423 U.S. 362, 378-380 (1976), which as here concerned federal judicial interference in the operation of a municipal police department, the Court held that principles of federalism and equity jurisprudence permit federal judicial intrusion into the workings of state and local government only in the "most extraordinary circumstances."[34] It logically follows from this standard that the prospect of a federal injunction against a municipal police department necessitates inquiry into (a) the nature and extent of the proposed intrusion and (b) the justification therefor.

The question before the Court is whether the preliminary injunction represents a major intrusion into LAPD operations. The City submits that it was on this point that the court of appeals in *Lyons II* erred and that such error affected

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[34]The federal judicial restraint embodied in principles of federalism is also reflected in the substantive constitutional standards applicable to this case. In formulating the "shocks the conscience" substantive due process standard, the Court admonished that it does not leave judges "at large." *Rochin v. California*, 342 U.S. 165, 170 (1952) (footnote omitted). Mr. Justice Blackmun has associated the concept with "outrageousness." *Baker v. McCollan*, 443 U.S. 137, 147 (1979) (concurring opinion). The Court in that case intimated that some latitude must be given local police when there is a claimed deprivation of a "liberty" interest under the Fourteenth Amendment. See *id.* at 144-146. Mr. Justice Powell has stated that only "intentional" or "deliberate" conduct can give rise to a due process deprivation. *Parratt v. Taylor*, 451 U.S. 527, 548 (1981) (concurring opinion). These and related constitutional doctrines clearly support Chief Justice Burger's admonition that "[f]ederal district courts were not meant to be superpolice chiefs. . . ." *Allee v. Medrano*, 416 U.S. 802, 858 (1974) (concurring and dissenting opinion).

(a) the nature of the justification it required for the intrustion, and (b) its review of the preliminary injunction for abuse of discretion.[35] The insensitivity of the court of appeals to principles of federalism thus made ineffectual the City's interlocutory appeal, the availability of which is keyed to the "need to permit litigants to effectually challenge interlocutory orders of serious, perhaps irreparable, consequence." *Baltimore Contractors v. Bodinger*, 348 U.S. 176, 181 (1955) (footnote omitted). Thus, fairly subsumed within the question before the Court is the question of whether the requisite "most extraordinary circumstances" existed to justify the preliminary injunction.

## A. The Preliminary Injunction Constitutes a Major Displacement of Municipal Authority

In *Lyons II* the court of appeals characterized the preliminary injunction as a "relatively innocuous interference by the judiciary with police practice" and therefore consistent with *Rizzo*. 656 F.2d 418, Pet. App. 29a. In actuality, the order is far from "innocuous" and indeed is more intrusive than that struck down in *Rizzo*. Should the preliminary injunction take effect, it will present the LAPD with a Hobson's choice between two alternatives antagonistic to *Rizzo*. The LAPD, on the one hand, conceivably could abandon use of the control holds pending trial, although it would prefer, if possible, to retain them.[36] Such compliance

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[35]Abuse of discretion is the standard of review of a preliminary injunction. *University of Texas v. Camenisch*, 451 U.S. 390, 393 (1981); *Brown v. Chote*, 411 U.S. 452, 457 (1973).

[36]The LAPD Chief of Police has said that he will, if required by the preliminary injunction, direct that use of the holds be discontinued. A. 617 (not before district court).

would require retraining of LAPD officers,[37] a costly impact not normally associated with provisional relief.[38] Should the injunction be lifted (*e.g.*, by the City prevailing at trial), a second phase of retraining would be necessary. On the other hand, the LAPD could opt to attempt to dissolve the preliminary injunction by presenting to the district court the means of dissolution it mentioned — a training program acceptable to the court. There is, of course, no guaranty that court approval would be forthcoming. Should the preliminary injunction take effect, the LAPD presently intends to make every reasonable effort to submit such a training program for approval. By such court-approved training the federal judiciary will have assumed control of an important aspect of training for over 6,500 municipal police officers. Whatever option is pursued by the LAPD, the district court's mandate of a reporting system interjects the federal courts into the day-to-day running of a municipal police department. The contempt sanction for violation may well cast the district court in a supervisory role in overseeing allegations of the use of the holds in prohibited circumstances, perhaps by officers reacting instinctively on the basis of earlier training and years of practice.

In this regard it may be observed that the preliminary injunction contains a latent ambiguity that may have misled the court of appeals in *Lyons II*. The holds would be permitted only when officers are threatened with "death or serious bodily harm." Pet. App. 21a. The expression "se-

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[37]Chief Gates explained that retraining is required to prevent "confusion on the part of an officer faced with attack" that can lead to "hesitation" potentially causative of death. A. 617 (not before district court).

[38]The typical "purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial of the merits can be held." *University of Texas v. Camenish*, 451 U.S. 390, 395 (1981).

rious bodily harm" begs for definition.[39] One possible meaning is a harm which creates a "substantial risk of fatal consequences." RESTATEMENT (SECOND) OF TORTS §63, Comment b (1965). Yet, perhaps the district court believed that the expression embraced situations where officers are faced with less serious threats. The court of appeals may have believed such was the case, not realizing that a more restrictive interpretation of the expression has certain unforeseen and deleterious consequences.

If the holds are limited to threats of an officer's well-being, the following problems arise:

1. *The holds, as a practical matter, will have been prohibited altogether.*

When officers are faced with threats of a serious nature, they generally must respond with levels of force higher than the control holds (*e.g.*, baton techniques, the service revolver).

2. *Some officers do not carry batons or other weapons.*

Some police officers work in plainclothes or in the jails where weapons are not carried for their safety and that of prisoners. The district court's order does not supply an alternative means of force to be used in these circumstances.

3. *Some persons who do not threaten officers must be controlled and cannot be controlled by lower levels of force.*

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[39]Fed. R. Civ. P. 65(d) requires injunctions to be "specific in terms" and descriptive in "reasonable detail" of the "act or acts sought to be restrained." The Court has stated that "[b]ecause of the rightly serious view courts have traditionally taken of violations of injunctive orders, and because of the severity of punishment which may be imposed for such violation, such orders must in compliance with Rule 65 be specific and reasonably detailed." *Pasadena City Bd. of Education v. Spangler*, 427 U.S. 424, 439 (1976); see *Schmidt v. Lessard*, 414 U.S. 473, 476 & n. 2 (1974). Also, absent such specificity, "informed and intelligent appellate review is greatly complicated, if not made impossible." *Id.* at 477.

Some apprehended suspects and prisoners in custody attempt to flee and may not in such endeavor threaten an officer. The officer has a duty to prevent flight.

4. *The holds may be the only means of force appropriate to the situation.*

The holds are a natural escalation of force from the level just below, the wrist locks and twist locks applied to the arm. When these pain compliance holds are ineffective, an officer may then be able to apply the control holds without releasing the subject. But if the holds are prohibited, other force techniques require release of the subject, *e.g.*, to apply the baton. Releasing a combative subject, however, offers the options of flight and the opportunity to grab an object to use as a weapon against the officer. Similarly, the holds may be available when other techniques (*e.g.*, the baton, karate kicks) are not, such as in close quarters.

If use of the control holds is enjoined, the federal judiciary will have left a significant void in the LAPD's use-of-force policy. The holds would be permitted in circumstances where they generally would not be used (*viz.*, in response to threats of death or serious bodily harm), but would be replaced with higher levels of force (*viz.*, baton techniques and karate kicks) in situations where the holds should be used. The resultant of all this would be a greater frequency and severity of injuries suffered by suspects and officers. The risk of death is necessarily increased. These consequences are far from "innocuous." Force techniques are concerns integral to the functioning of any police department, as they involve the day-to-day activities of police officers. The adequacy of citizen complaint procedures, the concern in *Rizzo*, while essential to responsible policing, is not as fundamentally associated with police operations. Thus, the intrusion here exceeds that eschewed in *Rizzo*.

### B. The Intrusion Is Not Justified

The district court's issuance of the preliminary injunction was predicated on two facts neither of which finds support in the record: (1) the holds constitute "deadly force," Pet. App. 25a, and (2) LAPD academy training provides officers with "at most two hours' instruction on the use" of the holds and the present training program is "totally inadequate when weighed against the potential danger" associated with the holds. Pet. App. 24a.

The finding that the holds represent "deadly force" cannot be reconciled with the only statistical data on fatalities before the court. During an 18-month period the holds were applied at least 975 times, and the respondent alleges that 3 persons died as a result of application of the holds. Assuming *arguendo* that the fatalities were caused by the holds, these data yield a fatality rate of .31%. Moreover, the district court found that during the previous 60 months "at least" 9 persons died following application of the holds, there being a "high likelihood that these fatalities were caused by misapplication." Pet. App. 25a. The record is devoid of evidence establishing how the holds were applied to the decedents; hence, the finding of "misapplication" is sheer speculation. But if misapplication were the cause, presumably such finding implies that in the thousands of applications wherein no death or serious injury resulted, the holds were properly applied. The district court's finding also fails to take into account the role other factors may have played in bringing about death (*e.g.*, drugs, predisposing medical conditions). The record, which is not adequate to support any firm conclusions about causation,[40] strongly suggests

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[40]The evidence adduced relative to fatalities comes primarily from LAPD and Los Angeles County coroner records. Depositions of the persons who prepared these records have yet to be taken.

that in most of the deaths in question these other factors played significant roles. See, *e.g.*, A. 331-334. The record also indicates that persons under the influence of phencyclidine (PCP) present especially vexing control problems for police officers due to their irrational conduct, superhuman strength, and extremely high pain threshold. See A. 128-138.

The district court's finding of inadequate training appears to be built upon the finding that "at most" two hours' instruction is given. As discussed at length *supra* (pp. 14-17), the two-hour finding is not supported by the record and, hence, is clearly erroneous.

### C. The Constitution Requires No More Than Rational Official Conduct

The district court's findings fail to acknowledge what is obvious from the record; namely, that the LAPD, in developing and implementing its policies and practices relative to the control holds, has behaved eminently reasonably. It has, after all, conducted three formal studies since 1970 which took into account the opinions of experts in medicine, the martial arts, and police science. It has responded to the results of these studies, from time to time adjusting its policies and practices in light of what has been learned. Moreover, LAPD research in this and related areas is a continuing process.

In short, the issue before the Court is not whether use of the control holds represents wise police policy. On this and similar subjects the federal judiciary should defer to those charged with responsibility for police administration, absent reasonable cause to believe that a particular policy is outrageous. However the record is viewed, it does not plausibly support the conclusion that the control holds constitute an outrageous force technique.

Principles of federalism and of substantive due process, therefore, permit federal judicial administration only of rogue local governments — governments which by their conduct have consistently and unmistakably given notice that they cannot be trusted to perform their responsibilities without trampling civil liberties underfoot. The federal courts are not to second-guess the good faith and sometimes imperfect efforts of local governments in conducting their affairs, particularly when reasonable minds can disagree over the policy or practice in question.

The City is not a rogue government; its police department has in good faith adopted and implemented a policy of using minimal force upon resisting suspects. The control holds are central to this policy, this philosophy of police science. In so doing, the LAPD has conscientiously attempted to balance societal interests of the highest order: the need to control resisting suspects against the need to minimize the risk of injury to suspects and police officers. The decisions below cannot be reconciled with this reality.

## CONCLUSION

The judgment of the court of appeals should be reversed, and the Court should direct dismissal of all claims for injunctive or declaratory relief.

Respectfully submitted,

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April, 1982

## APPENDIX A

### Rules of Court Involved

Federal Rule of Civil Procedure 23:

(a) *Prerequisites to a Class Action.* One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) *Class Actions Maintainable.* An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members as a class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interest; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and

that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) *Determination By Order Whether Class Action to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.*

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment

in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate, (A) an action may be brought and maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of the this rule shall then be construed and applied accordingly.

(d) *Orders and Conduct of Actions*. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) *Dismissal or Compromise*. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise

shall be given to all members of the class in such manner as the court directs.

Federal Rule of Civil Procedure 65(d):

(d) *Form and Scope of Injunction or Restraining Order.* Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Rules of the United States District Court for the Central District of California, Rule 2(g):

*Civil Cases Transferred Under "Low-Number" Rule*:

1. The clerk shall promptly examine the original complaint or petition in each civil action and proceeding hereafter filed and ascertain whether any one or more civil actions or proceedings previously commenced and any one or more currently filed appear (a) to arise from the same or substantially identical transactions, happenings, or events; or (b) involve the same patent or the same trademark, except where in one or both of the actions concerned, the same patent or trademark is joined with other patents or trademarks which do not cover the same or substantially identical things or devices; or (c) call for determination of the same or substantially identical questions of law; or (d) for other reasons would entail substantial duplication of labor if heard by different judges.

2. Whenever it shall appear to the clerk that any one or more of the above circumstances (1)(a)-(d) exist, it shall

be the duty of the clerk to report the cases in question to the judges concerned at the earliest date practicable.

The clerk's report shall set forth, as to each action or proceeding listed therein: (a) the case number, (b) the fullest practicable statement of the names of all parties, (c) a brief statement of the nature of the case and the relief sought [see Local Rule 4(b)], (d) the name of the attorney for plaintiff or petitioning party, and (e) such other information as will, in the opinion of the clerk, assist in determining whether a case should be transferred under this "low-number" rule. The clerk's report shall be accompanied by an appropriate order for the signature of the judges concerned with the proposed transfer.

3. All pending civil actions and proceedings, which fall within any of the above categories (1)(a)-(d), shall be assigned to the judge to whom was assigned, pursuant to Local Rule 2, the case first filed (*i.e.*, the case bearing the lowest number) of any given series of cases which should, to avoid unnecessary duplication of judicial effort, be heard by the same judge. Orders for transfers of cases subject to this "low-number" rule shall be made and entered at the earliest practicable date following commencement of the action or proceeding.

4. No single series of cases comprising more than ten in number may be transferred to a single judge pursuant to this order without the consent of the transferee judge.

5. For each case so transferred to his calendar, the transferee judge shall receive assignment credit in the same manner as for a newly filed case regularly assigned under this rule; and the transferor judge shall receive the assignment of an additional newly filed case under this rule for each case transferred from his calendar pursuant to this "low-number" rule.

6. The court shall effectuate all case-assignment credits and charges resulting from transfers under this "low-number" rule at the time assignment cards are next prepared in accordance with this rule following each such transfer.

7. It shall be the continuing duty of each attorney appearing in any action or proceeding in this court to bring promptly to the attention of the court all facts which in the opinion of counsel appear relevant to a determination whether such case and one or more other pending cases should, in order to avoid unnecessary duplication of judicial effort, be heard by the same judge.

8. It is not permissible to dismiss and thereafter refile an action for the purpose of obtaining a different judge. Whenever an action is dismissed before judgment and thereafter the same or essentially the same action is re-filed, the latter action shall be assigned to the judge to whom the first action was assigned. It shall be the continuing duty of every attorney appearing in such a re-filed action promptly to bring the facts of the matter to the attention of the Clerk in writing. [Added 1-1-68.]

## APPENDIX B

### Local Laws Involved

Los Angeles City Charter

Section 7:

The Mayor, City Attorney, Controller, members of the City Council, and members of the Board of Education, shall hold their offices for a term of four years.

The terms of all such officials shall commence on the first day of July next succeeding their election.

Section 20:

The Council shall consist of fifteen (15) members, elected as in this charter elsewhere provided.

Section 22, first paragraph:

The Council, except as otherwise in this Charter provided, is the governing body of the City.

Section 70, provides in part:

The following departments of the city government are hereby created:

. . . . .

(b) Personnel
Fire
Police

Said departments shall each be under the control and management of a board of five commissioners.

. . . . .

Section 73, first paragraph:

The members of each of the boards referred to in Section 70 and the members of the Board of Zoning Adjustment referred to in Section 98½ shall be appointed, and may be removed by the Mayor, subject in both appointment and removal to the approval of the Council by majority vote.

## APPENDIX C

### Relevant District Court Proceedings During Pendency of Appeal in Lyons II

| Date | Filings - Proceedings |
|---|---|
| February 27, 1981 | Plaintiff files motion for class certification. |
| March 9, 1981 | Plaintiff files motion for summary judgment. |
| March 13, 1981 | City files opposition to motion for class certification. |
| March 16, 1981 | Stipulation and order filed that second amended complaint be filed, that it be deemed served on the City, and that answers on file are deemed to be answers thereto with certain provisions.<br>Plaintiff files second amended complaint. |
| March 17, 1981 | Order filed staying plaintiff's motions for class certification and summary judgment pending appeal of the preliminary injunction. |

## APPENDIX D

### Excerpts from District Court Documents Not Contained in the Record

Motion in Opposition to Plaintiff's Request that this Court Take Judicial Notice, etc., filed December 1, 1980, 15:22-16:10:

The defendants agreed that depositions would be used only for those witnesses who submitted declarations in support of or in opposition to the issuance of a preliminary injunction. Additionally, Lyons [sic] deposition is irrelevant to the issues before this Court. The application for preliminary injunction concerns the *policy* of the City and not the *conduct* of its individual officers. (See section VI of defendants [sic] motion in opposition to the issuance of a preliminary injunction).

Opposition of Defendants to Class Certification, etc., filed March 13, 1981, 1:25-2:5:

[In opposing the respondent's motion for class certification, the City set forth the following grounds:]

1. That at the present juncture of this lawsuit class-action certification is premature;

2. Plaintiff has inadequately pled class action matters pursuant to Federal Rule of Civil Procedure 23;

3. Class action certification is unnecessary in the instant case;

4. Several of the prerequisites to a class action suit have not and cannot be maintained by the Plaintiff in the instant case.

Second Amended Complaint, filed March 16, 1981, 9A:1-5:

Plaintiff brings this Count V and Count VI as a class action on behalf of himself and all other persons threatened with

application of a bar arm control or a carotid artery control when they do not threaten to inflict serious bodily harm.

## APPENDIX E

### Excerpts from LAPD Reports Not Contained in the Record

*Report on Upper Body Control Holds* 8-9 (October 6, 1981):

*Issue #4:*

During the first quarter of 1981, how many arrest-related altercations occurred in which upper body control holds were used?

*Response:*

During the first quarter of 1981, there were a total of 52,162 arrests for Part I and Part II crimes. For this same period, 212 altercation arrest reports were reported. Thus, an altercation occurs in approximately 0.40% of the arrest incidents. Upper body controls were only used in one hundred thirty-eight (138) of these situations, 0.26%.

# Respondent's Brief

Office - Supreme Court, U.S.
FILED
JUL 27 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-1064

# IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

THE CITY OF LOS ANGELES,

Petitioner,

vs.

ADOLPH LYONS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## RESPONDENT'S BRIEF

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## QUESTIONS PRESENTED

From before the time this suit was instituted until May, 1982, the official written policy of the Los Angeles Police Department ("LAPD") allowed its officers to apply strangleholds to citizens in a variety of routine, non-violent circumstances. At least fifteen persons were strangled to death between 1975 and 1982 by officers executing this policy, eleven (73%) of whom were black. In May, 1982, the City discontinued the stranglehold policy and introduced a new policy more restrictive than the relief Lyons obtained in the district court.

In view of these facts, the case now presents these questions:

1. Whether the writ should be dismissed as improvidently granted,

and the case remanded for vacation of the preliminary injunction, because the City's May, 1982 discontinuance of its challenged policy has mooted Lyons' claim for, need of, and entitlement to preliminary injunctive relief?

2. Whether, on appeal from a preliminary injunction, the Court of Appeals abused its discretion in concluding that Lyons had sufficiently shown a likelihood of demonstrating standing where he was challenging a practice that had been applied to and injured him, and where he justifiably feared that he would be strangled to death upon any contact with the LAPD?

3. Whether, in light of principles of federalism and the jurisdiction that Congress has conferred on the courts to enforce the Fourteenth Amendment, the courts below erred in

granting preliminary injunctive relief against an official policy and practice of the LAPD authorizing the application of strangleholds absent the threat of death or serious bodily harm, which policy has resulted in the deaths of many individuals?

## LIST OF PARTIES

The parties are the City of Los Angeles and Adolph Lyons and all persons similarly situated.

TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTIONS PRESENTED | i |
| LIST OF PARTIES | iii |
| TABLE OF AUTHORITIES | vii |
| RESPONDENT'S BRIEF | 1 |
| JURISDICTION | 1 |
| STATEMENT OF THE CASE | 2 |
| 1. Introduction | 2 |
| 2. Proceedings | 5 |
| 3. Facts | 15 |
| A. The Record No Longer Reflects the Operative Facts | 15 |
| B. Former Stranglehold Policy | 17 |
| (1) The Extent of the Policy | 17 |
| (2) Training and Instruction | 19 |
| (3) High Risk of Injury or Death | 26 |
| (4) Less Intrusive Alternative | 33 |

Page

SUMMARY OF ARGUMENT 37

ARGUMENT 43

I. THE WRIT OF CERTIORARI SHOULD BE DISMISSED AS IMPROVIDENTLY GRANTED BECAUSE INTERVENING CHANGES IN THE CITY'S STRANGLEHOLD POLICY HAVE MOOTED THE NEED FOR THE PRELIMINARY RELIEF GRANTED BELOW 43

II. PRIOR TO RECENT CHANGES IN THE CITY'S STRANGLE-HOLD POLICY, RESPONDENT LYONS HAD STANDING TO SEEK INJUNCTIVE RELIEF 47

A. The Standard of Review to be Applied is Whether the Standing Decision Constituted an Abuse of Discretion 47

B. Prior to the Policy Change, Lyons Had a "Case or Controversy" With the City 49

C. Lyons Also Had Standing Under the "Capable of Repetition Yet Evading Review" Exception to the Mootness Doctrine 66

Page

D. Notwithstanding Its Failure to Certify the Class, the Relief Fashioned by the District Court was Appropriate 70

III. THE COURT OF APPEALS' DECISION COMPORTS WITH THE PRINCIPLES OF FEDERALISM 78

CONCLUSION 85

## TABLE OF AUTHORITIES


Page

### Cases

Allee v. Medrano
416 U.S. 802 (1974) 55,65,69

Baker v. Carr
369 U.S. 186 (1962) 52

Bivens v. Six Unknown Agents
403 U.S. 388 (1971) 71

Brown v. Chote
411 U.S. 452 (1973) 18,47,48

City of Newport v. Fact Concerts, Inc.
___ U.S. ___
101 S.Ct. 2748 (1981) 41

Cook v. Hudson
429 U.S. 165 (1976)
cert. dismissed 46

Cramp v. Board of Public Instruction
368 U.S. 278 (1961) 64

Davis v. Passman
442 U.S. 228 (1978) 71

Dayton Board of Education v. Brinkman
443 U.S. 406 (1977) 72

Doe v. Bolton
410 U.S. 179 (1973) 64

| | Page |
|---|---|
| Doran v. Salem Inn<br>422 U.S. 922 (1975) | 45 |
| Dunn v. Blumstein<br>405 U.S. 330 (1972) | 70 |
| Elrod v. Burns<br>427 U.S. 347 (1976) | 74 |
| Epperson v. Arkansas<br>393 U.S. 97 (1968) | 64 |
| Fuentes v. Shevin<br>407 U.S. 67 (1972) | 52,65 |
| Goldberg v. Kelly<br>397 U.S. 254 (1970) | 52,65,66 |
| Golden v. Zwickler<br>394 U.S. 103 (1969 | 63 |
| Hague v. Committee for Industrial Organization<br>307 U.S. 496 (1939) | 55 |
| Hall v. Beals<br>396 U.S. 45 (1969) | 63 |
| Hutto v. Finney<br>437 U.S. 678 (1978) | 83,84 |
| Jones v. Hildebrant<br>432 U.S. 183 (1977) | 69 |
| Jones v. State Board of Education for the State of Tennessee<br>397 U.S. 31 (1970)<br>cert. dismissed | 46 |

Page

Lankford v. Gelston
364 F.2d 197
(4th Cir., 1966) 49,56,58

Linda R.S. v. Richard D.
410 U.S. 614 (1973) 51,53,54

Lyons v. City of Los Angeles
(Lyons I)
615 F.2d 1243 (9th Cir.,
1980), cert den.
449 U.S. 934 8,62,67,78

Lyons v. City of Los Angeles
(Lyons II)
656 F.2d 417 (9th Cir.,
August 17, 1981) (modified
August 20, 1981) (per
curiam) mandate stayed
pending cert. ___ U.S. ___
102 S.Ct. 14 (Sept. 29,
1981) 14,15,78

Marbury v. Madison
1 Cranch 95
5 U.S. 137 (1803) 71

Massachusetts v. Mellon
262 U.S. 447 (1923) 50,53,54

Milliken v. Bradley (II)
433 U.S. 267 (1977) 72

Monell v. Department of
Social Services of the
City of New York
436 U.S. 658 (1978) 78

Page

Moore v. Ogilvie
394 U.S. 814 (1969) 69,70

Murphy v. Hunt
___ U.S. ___
50 U.S.L.W. 4264 (1982) 65

Nyquist v. Mauclet
432 U.S. 1 (1977) 64

O'Shea v. Littleton
414 U.S. 488 (1974) 49,50,53,54,58
59,60,61,62,63,64

People v. Trevino
72 Cal. App. 3d 686
140 Cal. Rptr. 243 (1977) 28

Piccirillo v. New York
400 U.S. 548 (1971)
46

Princeton v. Schmid
___ U.S. ___
50 U.S.L.W. 4159 (1982) 63

Pullman Standard v. Swift
___ U.S. ___
50 U.S.L.W. 4425 (1982) 18

Rizzo v. Goode
423 U.S. 362 (1976) 14,40,49,50,53
54,55,56,57,61,
62,64,78,79,84

Robertson v. Wegmann
436 U.S. 584 (1978) 68

Roe v. Wade
410 U.S. 113 (1973) 69

Page

Rogers v. Lodge
___ U.S. ___
50 U.S.L.W. 5041 (1982) 18

Sampson v. Murray
415 U.S. 61 (1974) 45

Scheuer v. Rhodes
416 U.S. 232 (1974) 69

Schlesinger v. Reservists Committee to Stop the War
418 U.S. 208 (1974) 64

Simon v. Eastern Kentucky Welfare Rights Organization
426 U.S. 26 (1976) 72

Sosna v. Iowa
419 U.S. 393 (1975) 73

Southern Pacific Terminal Co. v. Interstate Commerce Commission
219 U.S. 498 (1911) 67

Spomer v. Littleton
414 U.S. 514 (1974) 60,61,65,66

Steffel v. Thompson
415 U.S. 452 (1974) 69

Swann v. Charlotte-Mecklenburg Board of Education
402 U.S. 1 (1971) 71,84

Truax v. Raich
239 U.S. 33 (1915) 64

Page

United States Parole Commission v. Geraghty
445 U.S. 388 (1980) 65,74,75

University of Texas v. Camenisch
451 U.S. 390 (1981) 2,45,47,48

Valley Forge Christian College v. Americans United
___ U.S. ___
102 S.Ct. 752 (1982) 45,46,50 51,53

Washington v. Washington State Commercial Passenger Fishing Vessel Association
443 U.S. 658 (1979) 83

Weinstein v. Bradford
423 U.S. 147 (1975) 63,74,77

Wooley v. Maynard
430 U.S. 705 (1977) 52,65

Younger v. Harris
401 U.S. 37 (1971) 60

Others

Moenssens and Inbau, Scientific Evidence in Criminal Cases 2d Ed. (Foundation Press, 1978) pp. 228-229. 28

Fed. R. Civ. P. 52(a) 18

| | Page |
|---|---|
| 42 U.S.C. §1983 | 52,58 |
| U.S. Constitution Article III | 1,45,58 67,69,72 |

No. 81-1064

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

THE CITY OF LOS ANGELES,
Petitioner,

vs.

ADOLPH LYONS.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

# RESPONDENT'S BRIEF

## JURISDICTION

For the reasons set forth at greater length in Point I, infra, this Court lacks jurisdiction over this appeal from the decision granting a preliminary injunction. Under Article III, this Court has jurisdiction only over live cases or controversies. The City has now provided, as a matter of policy, more relief than Lyons had sought or obtained in the courts below. Accordingly, there is no live dispute between the parties and no

need for a preliminary injunction. Lyons no longer seeks its maintenance. Under settled precedent, the issues before this Court are therefore moot. See University of Texas v. Camenisch, 451 U.S. 390 (1981).

## STATEMENT OF THE CASE

1. Introduction

Until May, 1982, it had for many years been the official written policy of the City of Los Angeles ("City") that the police officers should employ strangleholds[1] in a variety of routine

[1]The strangleholds are of two primary types. The "bar arm control" is applied by a right-handed person as follows: Stand behind your victim. Place your right arm around his neck, positioning your forearm directly in front of and against the victim's Adam's apple. Grasp your right fist with your left hand and pull backwards (Continued)

circumstances. See, e.g., Pet.App. 41a-51a, A.381.[2] Since 1975,

---

with your right forearm and left hand, suppressing "the trachea thereby constricting the flow of oxygen to the lungs." Pet.App. 23a.

The "carotid control" is applied by a right-handed person as follows: Stand behind your victim. Place your right arm around his neck, positioning the inside of your right elbow directly in front of and against the victim's Adam's apple. Grasp your right fist with your left hand. Press your right fist inward toward the victim's neck and tighten and close your right arm, compressing both sides of the victim's neck "to impede the flow of blood to the brain." Pet.App. 23a.

[2]"Pet.App." refers to the appendix to the City's petition for writ of certiorari. "Opp.Pet.App." refers to the appendix to Lyons' opposition to the petition for writ of certiorari. "A." refers to the joint appendix filed in this Court. "CR" refers to the district court clerk's records comprising part of the record on appeal in the court of appeals in Lyons II. "Ex" refers to exhibits comprising another part of the record on appeal. "RT" refers to the reporter's transcript in the record on appeal. "City Br.App." refers to the appendix attached to City's brief on (Continued)

as the district court found, "following employment of the subject [strangle] holds by officers of the Department, at least nine (9) persons met such fatalities." Pet.App. 25a. At that time, there had been an additional death of which the parties were unaware. A.399-568. Five additional deaths have occurred since the district court's preliminary injunction was stayed December 24, 1980, including one death on April 5, 1982 since this Court's stay. City's Memorandum Suggesting Mootness, 2-3. Of the fifteen killed, eleven (73%) were black males. Black males constitute only nine percent of the population of Los Angeles.

In May, 1982, the Los Angeles

---

the merits.

Chief of Police totally banned use of the "bar arm" strangleholds. On May 12, 1982 the Los Angeles Board of Police Commissioners imposed a six-month moratorium on use of all police strangleholds unless the situation called for use of deadly force -- to wit, where "death or serious bodily injury" was threatened.

2. Proceedings

On October 6, 1976, Adolph Lyons was a 24-year-old black male. At 2:00 a.m. he was stopped by Los Angeles police officers for a traffic infraction because one of his taillights was burned out. The district court found that during the course of that stop, "without provocation or legal justification" (Pet.App. 23a), the officers applied a stranglehold

around Lyons' neck until he was rendered unconscious. Lyons feared for his life, gasped for air, choked, spit up blood, urinated and defecated on himself (symptoms of impending death, A.329) and almost died. He was thereupon issued a traffic citation and released. Ex 1.

On February 7, 1977, Lyons commenced this action (under 42 U.S.C. §1983) for injunctive and declaratory relief and damages in U.S. District Court, Central District of California against the City of Los Angeles and certain involved officers. A.1, A.5-19. He alleged that the City authorized, instructed and encouraged, as official policy, use of stranglehold when no deadly force was threatened. A.10. Lyons claimed that, as of 1977, at least two persons had died

from the strangleholds. Id. He alleged that the policy threatened to deprive him "and others similarly situated, under color of law" of constitutional rights to be secure in their persons against unreasonable seizure and not to be deprived of life, liberty or property without due process of law. A.11. He claimed that LAPD policy threatened him "and others similarly situated" with irreparable injury, to wit, "permanent physical injury and loss of life." In light of the fact that he had been choked without provocation, he alleged that he "justifiably fears that any contact he has with Los Angeles Police officers may result in his being choked and strangled to death without provocation, justification or other legal excuse." A.11. As a consequence of his experience and

the continuing stranglehold deaths, he becomes "extremely apprehensive and nervous" whenever he sees an LAPD police car. A.35. To protect himself, Lyons sought to enjoin stranglehold use unless the subject "reasonably appears to be threatening the immediate use of deadly force." A.16-17.

The City successfully moved for judgment on the pleadings as to the injunctive and declaratory aspects of the case. A.1. The Ninth Circuit unanimously reversed. Lyons v. City of Los Angeles (Lyons I), Pet.App. 3a-20a, cert. den., Pet.App. 18a. The district court court thereupon scheduled a hearing on Lyons' motion for a preliminary injunction. The hearing was held on December 18, 1980. A.3.

At the hearing, Lyons submitted

expert declarations, depositions and 49 exhibits in support of his motion.

On December 23, 1980, the district court issued its findings of fact and conclusions of law (Pet.App. 23a) and entered its preliminary injunction. Pet.App. 21a.

The district court found that the strangleholds constituted deadly force, and that the City maintained a policy authorizing their use "under circumstances where no one is threatened by death or grievous bodily harm." Pet.App. 24a. The court also found that a stranglehold had been used on Lyons in a routine stop for a traffic infraction "without provocation or legal justification. Pet.App. 23a.

After carefully examining the evidence, the district court found that the strangleholds "engender a

high risk of irreparable injury or death as presently used and under the present training methods offered by the Department". Pet.App. 24a. (Emphasis added). The court found that when strangleholds are used on persons with pre-existing ailments or "under the influence of mind-altering drugs or medication," there is a "substantially greater likelihood" of "irreparable conditions." Id. Moreover, the court found that when strangleholds are used, "there may be a natural tendency of such victim to physically react by instinct or reflex. This almost inevitable reaction may be interpreted by the officer as one suggesting resistance or aggression, thereby prompting the officer either to increase the force or duration of its application or resort to both such

countermeasures." Pet.App. 25a. The court found that the stranglehold could result in "fatal consequences within a matter of seconds or minutes." Pet.App. 25a, and that "the present training program is totally inadequate when weighed against the potential dangers . . . ." Pet.App. 24a.

The court found that stranglehold use "where death or serious bodily harm is not threatened is unconscionable in a civilized society." Pet. App. 25a. The court found that such use "constitutes a violation of the Fourteenth Amendment due process clause, substantive due process, and shocks the conscience of the court." Pet.App. 27a.

The court fashioned a simple prohibitory preliminary injunction which restricted the City from using the

strangleholds "under circumstances which do not threaten death or serious bodily harm." Pet.App. 21a. To ensure that the preliminary injunction would last only so long as the substantial risk of irreparable harm was present, the order provided that it would expire if the City presented an acceptable training program. To permit enforcement, the preliminary injunction required the City, pendente lite, to maintain written reports of strangulations which would be readily accessible to the court. Pet.App. 21a-22a.

On December 24, 1980 the City obtained from the Ninth Circuit a stay of the preliminary injunction pending appeal. Up to this point, since January 1, 1975, ten persons had died from LAPD strangleholds: seven black males and three white males. While

the injunction has been stayed, five more stranglehold deaths have occurred. A.399-568; City's Memorandum Suggesting Mootness 2-3; Lyons' Motion to Dismiss Certiorari As Improvidently Granted, p. 2.

While the City's appeal of the preliminary injunction was pending, Lyons filed a motion for class certification. The City opposed the motion on the ground, inter alia, that its appeal was pending. The district court thereupon stayed Lyons' motion for class certification pending appeal. Opp.Pet.App. C (not part of the record on appeal). Lyons' motion for class certification remains stayed.

On August 17, 1981, the Ninth Circuit Court of Appeals rendered its per curiam opinion (modified August 20, 1981) affirming the preliminary

injunction, holding:

> All the trial judge has done, so far, is to tell the City that its police officers may not apply life threatening strangleholds to persons stopped in routine police work unless the application of such force is necessary to prevent serious bodily harm to an officer. This relatively innocuous interference by the judiciary with police practice can hardly be characterized as an abuse of discretion when the record reveals that nine suspects[3] who have been stopped by the police and who have been subdued by the use of carotid and bar arm control holds have subsequently died, allegedly of the injuries sustained in the application of these holds. Cf. Rizzo v. Goode, 423 U.S. 362, 379, 96 S.Ct. 598, 608, 46 L.Ed.2d 561 (1976) (federal court may not order sweeping structural relief requiring federal court supervision of state police procedure absent "extraordinary circumstances").

Pet.App. 29a, Lyons v. City of Los Angeles (Lyons II) 656 F.2d 417 (9th

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[3]The court of appeals was then unaware of the undiscovered or intervening deaths of six other stranglehold victims.

Cir., August 17, 1981) (modified August 20, 1981) (per curiam) mandate stayed pending cert. ___ U.S. ___, 102 S.Ct. 14 (September 29, 1981).

The City unsuccessfully petitioned the court of appeals for rehearing, or, alternatively, a stay pending disposition of a petition for writ of certiorari. The City thereupon successfully petitioned Mr. Justice Rehnquist for the stay. Pet.App. 31a. The petition was granted February 22, 1982. A.4.

3. Facts

A. The Record No Longer Reflects the Operative Facts

After certiorari was granted, the City drastically changed its policy on stranglehold. On May 6, 1982, the Los Angeles police chief totally

banned use of the "bar arm control." On May 12, 1982, by a unanimous decision, the Los Angeles Board of Police Commissioners, which has oversight responsibility for the LAPD, imposed a six-month moratorium on all strangleholds unless death or serious bodily injury are threatened. This reversal of policy has rendered much of the City's brief incomplete or obsolete. For example: (1) the relative utility, safety, need for, and advantages of the strangleholds (City's Brief, 10, 18-21); (2) lack of viable alternatives (City's Brief, 22); (3) a "Hobson's choice" contention regarding training (City's Brief, 41-42); (4) the alleged ambiguity of the preliminary injunction (City's Brief, 42-43); (5) the problems that officers would face (City's Brief, 43-44).

B. Former Stranglehold Policy

(1) The Extent of the Policy

Official City policy authorized strangleholds in a wide variety of situations where neither life nor serious bodily injury was threatened.[4] Officers were permitted to use strangleholds whenever a police officer "felt" there was about to be a bodily attack on him;[5] to subdue any resistance by suspects;[6] to overcome or subdue combative suspects;[7] and "when necessary to stop a

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[4]Pet.App. 24a, 29a.

[5]A.381.

[6]City's Opposition to Application for Preliminary Injunction, CR #74 at 30 (emphasis added); Ex 47, LAPD Training Bulletin, May, 1978, at 1; Pet. at 41a (emphasis added). See also CR #74 at 21, 91.

[7]City's Reply Brief in Lyons II at 1.

suspect's resistance."[8] The City's opposition below to the relief requested by Lyons demonstrates that the then City policy was much broader, a conclusion confirmed by the recent alterations in City policy.[9]

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[8]Pet.App. 41a. The City's most precise articulation of policy for use of strangleholds is the vague and open-ended instruction that holds are to be used "when lower levels of force are not or would not be effective and when the higher self-defense techniques cannot or should not be used." City Br. 11.

[9]Although the City now appears to dispute the findings of the lower courts as to the extent of the policy (City Br. 29-30), the City is bound by Fed. R. Civ. P. 52 (a), mandating that "[f]indings of fact shall not be set aside unless clearly erroneous." This Court has time and again underscored the importance of this standard in protecting the integrity of the district court's function as fact-finder. See Pullman Standard v. Swift, ___ U.S. ___, 50 USLW 4425 (1982), Rogers v. Lodge, ___ U.S. ___ 50 USLW 5041 (1982), especially at the preliminary injunction stage. Brown v. Chote, 411 U.S. 452, 457 (1973).

(2) Training and Instruction

The court found that the training provided to police officers to guide and restrain their use of the strangleholds was "totally inadequate." Pet.App. 24a. Training bulletins are merely "available" to officers if they "choose to pursue" them (Deposition of City Police Training Officer Speer, A.380-381). Deputy Los Angeles Police Chief Ritter testified, "There has never been . . . any requirement that [a police officer] read [a training bulletin], understand it or be tested on it so we know he is fully aware of its contents." A.383. As a result, there is no way of knowing whether any Los Angeles police officers ever read or understand the policies and precautions recited in these bulletins.

Nor would the training bulletins

significantly reduce the substantial risk presented by the strangleholds even if they were made generally available. City expert, Robert Jarvis, who taught at the Los Angeles Police Academy for the past twelve years (Ex 44:8) testified that the bulletins do not mention the fact that the bar arm control can result in death "even if it is applied for just two seconds," (A.388) testimony which is confirmed by examination of the bulletins (Ex 47,49).

In addition to the City's lackadaisical procedure for distributing training bulletins, its stranglehold training was woefully inadequate considering the extreme dangers involved from use of the techniques.

City experts Robert Jarvis and Dr. Koiwai agreed that a suspect cannot be rendered unconscious using a bar arm

control. A.328,386. Jarvis testified that the bar arm is used to "[i]nflict pain to gain compliance," (A.385-386) and that an officer is trained to choke "for so long as the suspect is moving and has not given up." A.387. He then gave this ominous testimony:

> Q. Well, you have told me that the bar arm control will not deprive him of oxygen?
>
> A. No, I [sic] could crush him and choke him to death, yes.
>
> Q. And that could happen in two seconds; could it not?
>
> A. Sure, it could.
>
> Q. Do you teach them at the Academy that the bar arm control can result in death even if it is applied for just two seconds?
>
> A. No, I don't believe so.

Q. Is that anywhere in the bulletin?

A. No.

Q. Why not?

A. I don't know. I can't answer that honestly.

A.388.

A review of the police training bulletins (Ex 47 and 49) confirms that this information is missing.

Tragically, the City refused to train its officers that strangleholds can and do result in death in a few seconds. Of the nine deaths presented to the district court, the City's own confidential homicide reports reveal that no victim was strangled for more than three minutes and that, where specified, the average duration was about 41 seconds. A.417, 418, 419, 420, 440, 458-460, 474, 475, 491, 494,

524, 543, 558, 565. These reports were not transmitted to the LAPD training academy because they are "maintained confidential for legal purposes." A.379-380. One Police Academy instructor testified in 1980 that he had no idea of how many stranglehold deaths had occurred in the previous five years and that "I haven't really given it much thought." A.379. The City taught that the holds could be safely applied for up to four minutes. A.387-388. Inconsistently, the training bulletins state that the holds must be discontinued after three minutes (Pet.App. H, 48a), or when resistance ceases. Pet. App. H 51a. The district court found that persons subjected to strangleholds instinctively or reflexively struggle for freedom which almost invariably is interpreted by the officer as

further aggression, prompting the officer to increase the force and duration of the strangling. Pet.App. 25a.

Terry Speer testified as a City expert with eleven years experience as a training officer at the Los Angeles Police Academy. Ex 45. He testified that the LAPD does not distinguish between felony suspects versus misdemeanor suspects in teaching acceptable methods of control (A.379) and that officers are instructed to use strangleholds whenever an officer "feels" there is about to be a bodily attack on him. A.381.

In 1978, after the death of an individual (Whitehead) from a broken neck caused by a bar arm, an Assistant Chief inexplicably ordered the Academy to develop a control hold that took pressure off the larynx. The Academy

followed orders and developed the "modified carotid" hold to be used as an alternative to the bar arm. But Academy personnel thought the Chief was incompetent and did not understand what was being taught. Ex 45:60-61 and 67-68. Speer had no idea whether the deaths or injuries have been reduced or increased by development of the alternative. Ex 45:88-89.

Ray Sua, a Police Academy instructor, testified as a City expert that the bar arm control was not a "pain compliance hold." Ex 43:25. Yet the May, 1978 training bulletin (Ex 47; Pet. Ex H, p. 48a) refers to it as a "pain compliance hold." The Police Academy considers it not to be a pain compliance hold, but to be an "unconsciousness rendering" procedure. A.238. Another City expert, Dr. Koiwai, says

it cannot cause unconsciousness. A.328. When the City's training instructor and experts cannot agree about the purpose and effect of a stranglehold, how can an officer in the field know when a stranglehold can properly be used or released?

(3) High Risk of Injury or Death

The City's policy created a "high risk of injury or death" and constituted deadly force, the use of which, in the circumstances permitted by the City, was "unconscionable." Pet.App. 25a.

The physiological effects of the strangleholds are described in the record in detail:

> The frontal area of the neck is highly innervated with both sensory and motor nerves. The laryngeal and pharyngeal nerves are directly affected by the pressure

exerted in a bar arm control. The traumatic interferences on these nerves can have at least two adverse effects. It can result in a laryngeal spasm or seizure which simply shuts off the tracheal air passage, leading to death by asphixiation (sic). Also, it must result in transmission to the brain of nerve messages that there is immediate, acute danger of death. This transmission immediately sets up a "fight or flee" syndrome wherein the body reacts violently to save itself or escape. Adrenalin output increases enormously; blood oxygen is switched to muscles and strong, violent struggle ensues which is to a great extent involuntary. From a medical point of view, there would be no way to distinguish this involuntary death struggle from a wilful, voluntary resistance. Thus an instruction to cease applying the hold when "resistance ceases" is meaningless.

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[P]ressure on both carotid sheaths also result in pressure, if inadvertent or unintended, on both vagus nerves . . . [s]timulation of these nerves can activate reflexes

> . . . that can result in immediate heart stoppage (cardiac arrest).

Declaration of Alex Griswold, M.D., A.365,367.

"[S]trangulation may be quickened by the struggling of the victim, the inhalation of vomitus or by shock triggering a vagal nerve mechanism." Moenssens and Inbau, Scientific Evidence in Criminal Cases 2d Ed. (Foundation Press, 1978) pp. 228-229.[10]

Los Angeles police officers generally and callously refer to applying the stranglehold as causing the victim to "do the chicken." Deposition of

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[10]The Court of Appeal in California has found such strangulation is "a dangerous and sensitive activity. It is the type of force that, more than any other, is likely to result in violent resistance by the arrestee." People v. Trevino, 72 Cal. App. 3d 686, 692, 140 Cal. Rptr. 243 (1977).

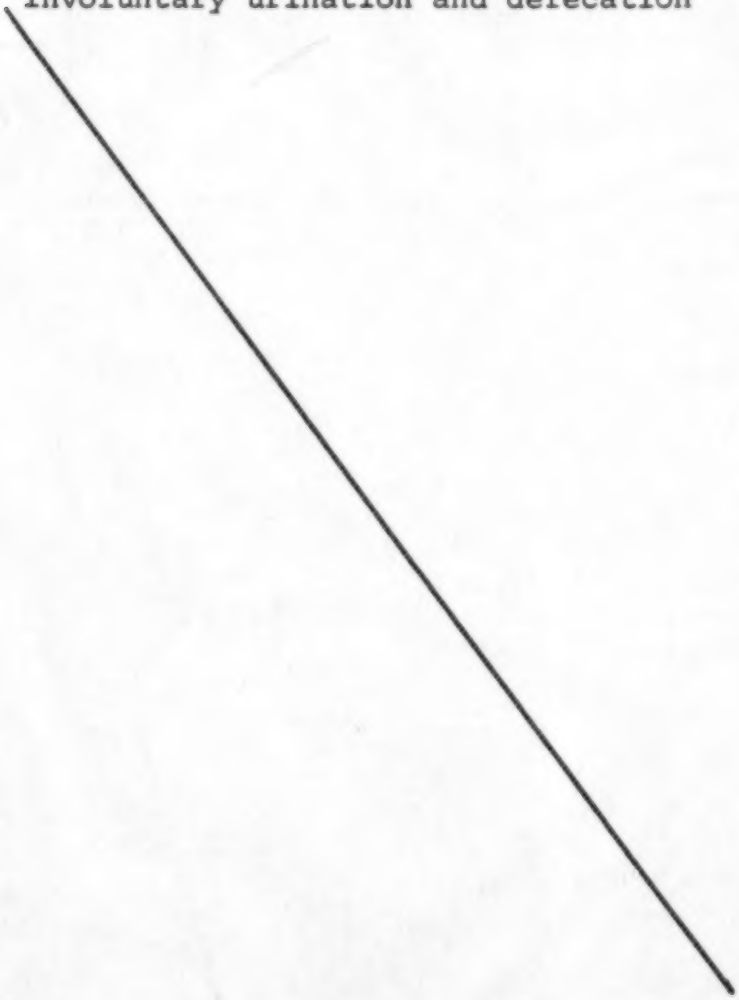
City's expert Jarvis Ex 44:93. Genesis of this term appears to arise from the strangulation symptoms of a chicken when its neck is wrung off.

The victim suffers "excruciating" pain. Deposition of City's expert Eichi Koiwai, M.D., A.327.

"[V]iolent struggle is "very definitely" likely to ensue (Deposition of City's Medical Director, Thrift Hanks, M.D., A.378) with the victim seeking to "flee or escape." Deposition of City's expert Jarvis. A.385. The victim's face turns blue, becoming cyanotic (lacking oxygenated blood), and he goes into a spasmodic state of convulsions. Ex 44:55. The victim's eyes roll back and he will sometimes "jerk" (Deposition of City's expert Speer, A.382), his body "wriggles", his feet kick up and down and his arms move about wildly.

Deposition of City's expert Sua, A.391-392.

In its terminal aspects, strangulation death is also attended by involuntary urination and defecation



(Deposition of City's expert Eichi Koiwai, M.D., A.329) which Lyons suffered. Deposition of Adolph Lyons, Ex 1:43. Death can result in seconds. Deposition of City's expert Jarvis, A.388; Lyons' expert Griswold, M.D., A.366-367.

The consensus of the experts in this case is that the stranglehold are extremely dangerous.

Lyons' expert Bruce Tegner, author of books on martial arts which have sold more than 3,000,000 copies, and a former instructor of killing techniques in the U.S. Army, declares:

> [C]hoking force against the windpipe involves a high risk of fatality. . . . [P]ressure should not be applied to the windpipe unless death is the desired result. [The LAPD bar arm control] "constitutes the use of deadly force and involves a high degree of risk of fatality." A.371.

One of the Army killing techniques Tegner taught was the LAPD bar arm control. Id.

Lyons' expert, Dr. Griswold, declares that both the bar arm control and carotid control are "extremely dangerous in an unpredictable fashion." A.364,366. He said both involve "an unpredictably high risk of death to the victim." A.366,367.

Lyons' expert, Dr. Fine, rendered his "strongly held" medical opinion that the strangleholds were "particularly dangerous." A.357.[11]

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[11]The City asserts that these strangleholds are "derived from the sport of judo." City Br. 11. The City neglects to mention that in competitive judo (as distinguished from police strangulation on the streets of Los Angeles), a stranglehold victim (i) understands that no one is attempting to break his neck (A.385); (ii) may obtain immediate release by signaling to his opponent (A.325); and (iii) is (continued)

(4) Less Intrusive Alternatives

Implicit in the district court's findings, left untouched by the court of appeals, is the conclusion that, on the record before it, its order limiting strangleholds to serious situations would not result (as the City claimed in its Petition) in "more frequent and more severe injuries to and more frequent deaths of suspects" than from the use of batons and karate kicks. Pet.12. In light of the City's May, 1982 policy change this contention is no longer credible. But even if the City's pre-May, 1982 contention is taken seriously, it would have to be rejected since it is wholly

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protected by close referee's supervision and attendance of personnel trained in cardiopulmonary resuscitation. Id.

unsupported by any evidence before the district court. The City never offered any evidence that severe injury or even one single death has resulted from use of these alternative techniques.

Pervading the City's petition was the misconceived implication that the injunction prohibits strangleholds which are necessary tools for police work.[12]

Respondent has never sought to prohibit use of strangleholds. See Pet.App. 5a. Nor does the preliminary

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[12] [T]he control holds are necessary . . . . (Pet.9.) [E]limination of the control holds may result in an increase in the frequency and severity of injuries to officers. (Pet.12.) [I]f the holds are prohibited, other force techniques require release of the subject . . . . (Pet.22.) . . . If use of the control holds is enjoined, the federal judiciary will have created a significant void in the Los Angeles Police Department's use-of-force policy. Pet.22.

injunction prohibit use of strangleholds. It recognizes, as the City now does, that they constitute deadly force and accordingly limits use to situations where death or serious bodily harm is threatened. The City has changed its policy and limited stranglehold use to precisely these situations.

The City asserts that strangleholds are used by "most major police departments in the country." Pet. 7. The record flatly contradicts this. According to the City itself, neither Chicago nor the Boston police departments use any stranglehold whatsoever, no matter what force is threatened. A.260. Nor, according to the City is the bar arm control used, regardless of the force threatened, by: the cities of Los Angeles (since May, 1982), Beverly Hills, Glendale, Santa Monica, South Pasadena,

New York (with 22,000 sworn personnel), the California Highway Patrol, Los Angeles County, San Diego County, the U.S. Army, the U.S. Navy. A.260-261; Responses to Requests 261, 262, 265, 269, 271 and 273; Ex 27. The City neglects to mention that most of the major police departments, including the City's as of May, 1982, which do employ strangleholds, employ them only pursuant to express policies at the level specified in the district court's injunction -- to wit, when serious bodily harm or death is threatened.

## SUMMARY OF ARGUMENT

1. The writ of certiorari should be dismissed as improvidently granted because in May, 1982, the City modified its stranglehold policy to more than comply with the terms of the preliminary injunction. These modifications outlaw the bar arm control and otherwise prohibit strangulation by police unless death or serious bodily injury is threatened. Accordingly, there is no present need for preliminary injunctive relief because the policy issue is moot.

2. Lyons had standing to seek injunctive and declaratory relief on behalf of himself and others because (a) he was almost killed by a police stranglehold applied to him pursuant to the express written policy found to be unconstitutional, (b) as a black male with knowledge of the dispropor-

tionate number of black male stranglehold deaths, he continued to suffer real, justifiable fear pursuant to the now-abandoned LAPD policy, and (c) a damage award would be wholly ineffective to reduce the pervasive fear engendered in Lyons and others by a policy which threatened death without due process.

3. Doctrinal exceptions to mootness relating to Lyons' standing made this case properly justiciable at its inception in 1977. When the preliminary injunction was granted, the City had failed to dispel a reasonable expectation that its conduct would be repeated. The City's conduct was capable of repetition but certain to evade review if standing were granted only for a few seconds to a victim about to be strangled. The victim would be dead or the stranglehold

released before he could have traveled to the courthouse.

4. This case is pending as a class action. After the preliminary injunction issued, Lyons moved for class certification. The City opposed class certification on the grounds, inter alia, that it was unnecessary because the injunction had class-wide effect. The City also sought and successfully obtained a stay of class certification pending appeal. This stay remains in effect. Issuance of the preliminary injunction to maintain the status quo until trial in view of the irreparable harm threatened (Pet.App. D. 24a-27a) was proper although injunctive relief is now no longer necessary.

5. The decisions below comport with the principles of federalism. When the preliminary injunction (Pet.

App. D. 21a) issued December 23, 1980, it constituted a "relatively innocuous interference by the judiciary with police practice," (Lyons II, Pet.App. E, 29a) particularly in view of the nine stranglehold deaths. As the court of appeals recognized, the deaths constituted such "extraordinary circumstances" that even sweeping structural relief would have been proper under Rizzo. Pet.App. E, 29a. The preliminary injunction merely limited use of strangleholds to situations where death or serious bodily harm was threatened, explained the manner in which the City could dissolve the injunction and, pursuant to proper ancillary jurisdiction, provided for record keeping to assure that the court could enforce its injunctive order. The ease with which the City changed

its policy demonstrates that the federal "intrusion," had it occurred, would have been minimal.

6. There is no adequate damage remedy. If Lyons had died, as fifteen others have died in recent years, no money could restore his life or otherwise make him whole. Death is the most irreparable of injuries and the real, justifiable and continuing fear of death constitutes a "personal stake" which cannot be relieved by any money payment. Moreover, punitive and exemplary damages are no longer available to encourage the City to change the stranglehold policy. City of Newport v. Fact Concerts, Inc., ___ U.S. ___, 101 S.Ct. 27, 48 (1981).

7. A police policy that "black male traffic violators may be shot" is comparable to former LAPD policy

that "an officer may fatally strangle a black male if the officer feels he is about to be attacked." Both policies must be amenable to constitutional oversight and limitation by federal courts if substantive due process is not aborted in fleeting situations where death is threatened.

## ARGUMENT

### I. THE WRIT OF CERTIORARI SHOULD BE DISMISSED AS IMPROVIDENTLY GRANTED BECAUSE INTERVENING CHANGES IN THE CITY'S STRANGLEHOLD POLICY HAVE MOOTED THE NEED FOR THE PRELIMINARY RELIEF GRANTED BELOW

The Court granted certiorari to consider (1) whether Lyons had standing to seek injunctive relief from the City's policy and practice of using strangleholds in non-life threatening situations and (2) whether the preliminary injunctive relief obtained constituted an improper substantial interference with a municipal police department. City's Brief, i.

As set forth in detail, supra, the City has now completely altered the stranglehold policy which Lyons sought to enjoin. The "bar arm"

hold is totally outlawed; the carotid hold, in all its forms, is limited to situations where death or serious bodily injury is threatened. All of the relief preliminarily sought from the district court has been achieved.[13]

As a result of the City's change of policy, the questions presented about the district court's preliminary

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[13]In addition to the new policy on the strangleholds themselves, the LAPD has initiated the record keeping required by the court below. The provision for training set forth in the preliminary injunction, which would have become operative only if the City had sought to use strangleholds in non-life threatening situations, is also now superseded. Although the court would have permitted the City to use strangleholds in such situations so long as adequate training was instituted, the City has plainly decided that it will not seek that power: It has eliminated strangleholds in non-life threatening situations regardless of training.

injunctive order are moot.[14] There is now no need for an injunction -- preliminary or permanent. Indeed, since the risk of irreparable harm indispensable to a grant of injunctive relief (See Doran v. Salem Inn, 422 U.S. 922 [1975]; Sampson v. Murray, 415 U.S. 61 [1974] is no longer present, injunctive relief is not appropriate, and Lyons no longer seeks maintenance of the preliminary injunction.

In light of these developments, Article III, which limits the jurisdiction of this Court to genuine cases or controversies (see Valley Forge Christian College v. Americans United,

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[14]While the preliminary injunction has, for the time being, been mooted by subsequent events, the lawsuit is not moot in that damage claims remain. See, e.g., University of Texas v. Camenisch, 451 U.S. at 39.

___ U.S. ___, 102 S.Ct. 752, 757-758 [1982]) mandates dismissal of this petition and remand to the district court for vacation of the preliminary injunction.

This case is no longer the proper vehicle for deciding the complex questions presented in the petition. Dismissal of the writ is therefore appropriate. See, e.g., Piccirillo v. New York, 400 U.S. 548, 549 (1971) (cert. dismissed; intervening decision made the case an "inappropriate vehicle for deciding a question of such far-reaching importance"). See also, Jones v. State Board of Education of Tennessee, 397 U.S. 31, 32 (1970) (cert. dismissed because of clouded record); Cook v. Hudson, 429 U.S. 165 (1976) (cert. dismissed; challenged practice subsequently forbidden by state law).

## II. PRIOR TO RECENT CHANGES IN THE CITY'S STRANGLEHOLD POLICY, RESPONDENT LYONS HAD STANDING TO SEEK INJUNCTIVE RELIEF

If the Court reaches the merits of this case despite the City's change of policy, the judgments below must be affirmed.

### A. The Standard of Review to Be Applied is Whether the Standing Decision Constituted an Abuse of Discretion

In reviewing interlocutory relief, the standard is whether issuance of the injunction constituted an abuse of discretion. University of Texas v. Camenisch, 451 U.S. at 393; Brown v. Chote, 411 U.S. 452, 457 (1973). In effect, the district court has simply found a likelihood that Lyons

would establish standing, or a case or controversy, sufficient to warrant preliminary injunctive relief assuming the other requirements for equitable relief were met.[15] In light of the "limited time which the parties had to assemble evidence and prepare their arguments," Brown v. Chote, 411 U.S. at 457, the finding that Lyons had standing is subject to the Brown-Camenisch standard of review for abuse of discretion, and not to the legal error standard applicable had the question received the more extensive, careful consideration which would have been undertaken after full discovery

[15]The City concedes that the standing issue depends on the evidence presented, not on the bare pleadings. City Br. 30.

and/or trial.[16]

B. Prior to the Policy Change, Lyons Had a "Case or Controversy" With the City

The City's principal contention is that Lyons lacked standing to challenge the City's stranglehold policy. Relying wholly on O'Shea v. Littleton, 414 U.S. 488 (1974) and Rizzo v. Goode, 423 U.S.

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[16]For example, evidence might have shown the precise parameters of the official policy, which the City now claims (Br. 29-30) had been misunderstood by Lyons and both courts below. Such evidence, and facts concerning the application of the policy, would have made possible a more detailed analysis of the "reality" and "immediacy" of the threat faced by Lyons and the class he sought to represent. The sparseness of the preliminary record on these critical questions further suggests the difficulty of deciding the questions presented in the present record. Compare Lankford v. Gelston, 364 F.2d (4th Cir., 1966) (standing found in a similar case challenging official city policy after careful examination of the record; cited with approval in Rizzo v. Goode, 423 U.S. 362, 373, n.8 [1976]).

362 (1976) the City argues that Lyons faced only an "abstract," "speculative" threat, not one of sufficient reality and immediacy to invoke the Court's preliminary equitable powers. City Br. 27-28. The City reads far too much into O'Shea and Rizzo, and disregards other cases with essentially indistinguishable facts where plaintiffs were found to have standing.

The constitutional limitation of the courts' jurisdiction to "cases" and "controversies" requires, at an "irreducible minimum," that "the party who invokes the courts' authority show that he personally has suffered some actual or threatened injury as a result of defendant's conduct." Valley Forge Christian College v. Americans United, 102 S.Ct. 752, 758, quoting Gladstone v. Bellwood, 441 U.S.

91, 99 (1979) (emphasis added); see also Massachusetts v. Mellon, 262 U.S. 447, 488 (1923) (requiring allegation that litigant "has sustained or is immediately in danger of sustaining some direct injury") (emphasis added); Linda R.S. v. Richard D., 410 U.S. 614, 617 (1973) ("some threatened or actual injury resulting from the putatively illegal action") (emphasis added). An academic dispute over social policy will not vest the court with jurisdiction. But this case is not academic. It is not denied that Lyons was choked pursuant to the City policy. The law is that an individual against whom a challenged policy has been applied ordinarily has standing unless it is nearly certain that the policy cannot

affect him in the future.[17] The reason is that a person suffering harm from governmental action has a controversy with those who instituted and applied the policy, and the facts of its application supply "that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of different

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[17] See, in addition to the cases cited supra and discussed in this section, Fuentes v. Shevin, 407 U.S. 67 (1972); Wooley v. Maynard, 430 U.S. 705 (1977); and Goldberg v. Kelly, 397 U.S. 254 (1970). In all three cases, the court approved injunctive relief against officially-sponsored practices with no more than has been shown here, past harm suffered by application of the practice to the plaintiff, and the absence of certainty that it could not occur again. Indeed, in expressly approving relief for Mrs. Maynard, who had never been subjected to official application of the challenged policy, the court noted that if affirmative suits by those such as hers were not possible there would never be "room for federal intervention under §1983." Wooley v. Maynard, 430 U.S. at 712, n.9.

constitutional questions(.)" Baker v. Carr, 369 U.S. 186, 204 (1962).

The City disregards the facts of this case. As the courts below found, Lyons plainly meets these criteria. The challenged policy has been applied to him; adjudication of its legality proceeded based on those concrete facts, not in a factual vacuum. Pet.App. 23a.

Despite the fact that Lyons qualifies as a plaintiff under Valley Forge, Gladstone, Mellon, and Linda R.S., the City nevertheless claims that "no case or controversy" exists because there is an insufficient threat that the injury he has received will be repeated. For this proposition, the City relies on O'Shea and Rizzo. City Br. 28-31. Although some language in O'Shea is

helpful to the City[18], both cases in fact support Lyons' standing.

In Rizzo, the Court's holding was principally addressed to plaintiffs' improper attempt to litigate individual acts of police misconduct against high police officials, without any proof that an official policy was being challenged. 423 U.S. at 372; see Pet. App. 9a. Here, by contrast, Lyons' controversy with the City is not based on what some of its officers might do "because of that unknown policeman's

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[18]Without citation, or attempt to distinguish Mellon, Linda R.S., or the other cases discussed supra, the O'Shea court wrote in dicta:

> Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief, however, if unaccompanied by any continuing present adverse effects.

414 U.S. at 495-96 (emphasis added).

perception of departmental disciplinary procedures," (423 U.S. at 372) but on what the lower courts found to be official City policy which had been applied to Lyons and had grievously harmed him.

To the extent that Rizzo bears on the facts of this case it supports the lower courts' preliminary findings of standing. First, the Rizzo court cited with approval both Hague v. CIO, 307 U.S. 496 (1939) and Allee v. Medrano, 416 U.S. 802 (1974), where broad injunctive relief was granted against unwritten but nonetheless official city policy that had been applied to plaintiffs.

Injunctive relief was granted in Allee to certain named plaintiffs and to a large class on the basis of past acts and no more certainty of recurrence of the challenged harm than Lyons and the class he seeks to represent here

have shown. See 416 U.S. at 814-815 (enjoining unlawful police practices based on past harm and "fear" that defendants would harm plaintiffs who were engaged in lawful acts). As the court stressed in language directly applicable here, "there can be no requirement that appellees continue to subject themselves to physical violence . . . throughout the pendency of the action in order to preserve it as a live controversy." Id. at 810.

In addition, the Rizzo court cited with approval Lankford v. Gelston, supra, a case where the facts predicating standing were if anything, weaker than those present here. 423 U.S. at 373, n.8. In Lankford, the plaintiffs challenged an officially sanctioned practice -- searching homes without warrants or probable cause -- at a time

when the practice had officially ceased. 364 F.2d at 202. Moreover, although the court of appeals noted that the policy "ha[d] been renounced only obliquely" and that "the danger of repetition has not been removed" (Id. at 204), there was no showing that the official practice would be applied in the future at all, much less that it would be applied to any named plaintiff. To the contrary, if the practice were resumed, all that was known was that it might be applied to any black person in Baltimore. Critical factors supporting the injunctive relief approved by the Fourth Circuit and distinguished by this Court in Rizzo, were proof of past violations; the fact that they were authorized by official policy; the severity of the violations; the insufficiency of money damages to repair the injury suffered

by the victims of the police searches; and the deterrent effect injunctive relief would have on the illegal city policy. All of those factors make this case indistinguishable. Indeed, the severe physical injuries that Lyons suffered and the deaths which the policy has visited on others (primarily, as in Lankford, on blacks) make the case for the simple prohibitory injunctive relief approved in Lankford even stronger here.

As the Ninth Circuit correctly observed (Pet.App. 8a-16a), O'Shea provides the City little help and, if carefully read, supports Lyons' standing.

In O'Shea this Court held that the case or controversy requirement of Article III was not satisfied when persons complained that if they violated a law, if they were charged,

if they were held to answer, and if they were tried, they might be subjected to discriminatory practices by a local judge. Given the distant relationship between plaintiffs and their claims, the Court concluded: "None of the named plaintiffs is identified as himself having suffered any injury in the manner specified." 414 U.S. at 495. By contrast, Lyons has suffered the injury "in the manner specified." His injury is like the injury found sufficient in O'Shea and which was used by the Court to highlight the difference between adequate and inadequate allegations of injury. "In sharp contrast to the claim for relief against the State's Attorney where specific instances of misconduct with respect to particular individuals are alleged, the claim against petitioners alleges injury in only the most

general terms. 414 U.S. at 495.[19]

The contrast thus dispositively pointed out by the Court -- between vague allegations by those who plead neither past exposure to harm or a real threat of future exposure, as in O'Shea, and specific allegations by those who have suffered specific instances of misconduct, as in the companion case against the State's Attorney (Spomer v. Littleton, 414 U.S. 514 [1974]), is precisely

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[19]The Court went on to note that counsel had represented at argument that certain plaintiffs had in fact once been victims of the practices alleged. However, none of those plaintiffs was currently suffering adverse effects from past incidents, and, as the Court stressed, it was certain that none would have the challenged practices applied to him in the future unless they again violated the criminal law, which they did not allege any intention to do. 414 U.S. at 496. Moreover, even if they did violate the law, there would have been adequate opportunity to raise the claim in the criminal proceedings. See Younger v. Harris, 401 U.S. 37 (1971).

what distinguishes Lyons from O'Shea.[20] Lyons was not challenging a policy which had never been applied to him or which could be applied only through an unlikely series of contingencies. The LAPD did apply the stranglehold to him to his great harm. It was the official policy of the City. He had a "realistic fear" that it would happen to him again at any time on any day, if he did no more than encounter the police on the street

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[20] A judgment upholding the complaint against the State's Attorney was vacated and remanded in Spomer, supra, but the Court's opinion makes clear that the dismissal was required not because there was an insufficient basis for equitable relief against the official who had committed the acts complained of, but solely because that official had been replaced with one who might well not continue those acts, which were not official city policy but were "personal" to the former official. See 414 U.S. at 520-522.

or highway.[21] All Lyons needed to do to subject himself to the threat of injury was to drive his car. In a city like Los Angeles, such behavior requires no concerted commitment to break the law, as in O'Shea, but merely a routine response to daily necessity. Such routine behavior would expose Lyons to the threat of summary execution with no possibility of the due process to which the O'Shea respondents had access: "[I]f any of the respondents are (sic) ever prosecuted and face trial, or if they are illegally sentenced, there are available state and federal procedures which

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[21] "[T]he odds of having that sort of encounter are much greater than the odds of having the sort of encounters described in O'Shea or in Rizzo, and therefore meet the constitutional requirements of 'case' or 'controversy'" giving Lyons standing to seek injunctive and declaratory relief. Lyons I, Pet.App. 9a.

could provide relief from the wrongful conduct alleged." O'Shea v. Littleton, 414 U.S. at 502.

By contrast, where standing was not found despite a showing of past injury, changed circumstances made it extremely unlikely that the challenged harm could recur to the plaintiff. Princeton v. Schmid, ___ U.S. ___, 50 U.S.L.W. 4159 (1982); Murphy v. Hunt, ___ U.S. ___, 50 U.S.L.W. 4264 (1982); Weinstein v. Bradford, 423 U.S. 147 (1975) (per curiam; Hall v. Beals, 396 U.S. 45 (1969); Golden v. Zwickler, 394 U.S. 103 (1969).

In a third category of cases, those where standing has been found without past injury, standing has often been found with a likelihood of injury no greater than faced by Lyons. See, e.g.,

Nyquist v. Mauclet, 432 U.S. 1, 6, n.7 (1977); Doe v. Bolton, 410 U.S. 179 (1973); Epperson v. Arkansas, 393 U.S. 97 (1968); Cramp v. Board of Public Instruction, 368 U.S. 278 (1961); Truax v. Raich, 239 U.S. 33, 38-39 (1915).

Finally, where there is neither past harm nor any realistic threat of its occurrence, standing has been denied. Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208 (1974); O'Shea v. Littleton, 414 U.S. 488 (1974).

A review of this Court's many cases where standing has been found supports the conclusion that neither Rizzo nor O'Shea prevents Lyons from establishing standing here. Standing will nearly always be found where, as here, plaintiff has actually suffered past harm. In such cases, the fact of past harm has been enough unless it is certain

that there is no reasonable chance of recurring injury. See, e.g., United States Parole Commission v. Geraghty, 445 U.S. 388 (1980); Allee v. Medrano, 416 U.S. 802 (1976); Goldberg v. Kelly, 397 U.S. 254 (1970).

Assume that a statute provided that any black person found driving with a broken taillight was subject to summary execution by police officers. Can it be doubted that this statute could be challenged by black drivers, especially those who had been so stopped and fired upon but who had only been wounded? This Court has properly predicated standing to challenge unconstitutional practices in far less egregious cases either by direct holding or by clear implication. See, e.g., Wooley v. Maynard, 430 U.S. 705 (1977); Fuentes v. Shevin, 407 U.S. 67 (1972); Spomer

v. Littleton, 414 U.S. 514 (1974); Goldberg v. Kelly, 397 U.S. 254 (1970). At this preliminary stage of the proceeding, it was not an abuse of discretion for the courts below to hold that the irreducible minimum required by Article III had been met.

C. Lyons Also Has Standing Under the "Capable of Repetition Yet Evading Review" Exception to the Mootness Doctrine

The court of appeals also relied, correctly, on the inter-relationship between the doctrines of standing and the "capable of repetition yet evading review" exemption to the mootness doctrine to conclude that Lyons could properly seek preliminary injunctive relief. Pet.App. 13a-14a. As the court of appeals noted, there is no

question "that Lyons once had a live and active claim meeting all the Article III requirements" if only for those "few seconds . . . between the moment he was stopped and the moment the stranglehold was applied." Lyons I, Pet.App. 12a. These few seconds suffice to bring this case squarely within the doctrine of Southern Pacific Terminal Co. v. ICC, 219 U.S. 498 (1911). An unlawful governmental practice has occurred with serious and irreversible impact on the rights of private parties. At the time of judgment, the practice was likely to recur, and would evade review unless permitted to be challenged.

Because of the fleeting nature of the police-civilian encounter producing the injury, effective equitable or declaratory relief must be subject to preenforcement, affirmative challenge. This Court

has never required individuals to undergo serious harm before they challenge official practices as unconstitutional.

The City argues that a damage action (if one exists - City Br. 32) is sufficient relief for Lyons, and therefore that this challenge will not evade review. City Br. 31. The City forgets that equity developed in the common law precisely because the remedy of damages was inadequate. Lyons is not required to await further injury or death to challenge an allegedly unconstitutional practice.[22] Certainly if death ensues, no amount of money could compensate the victim. The victim has lost the ability to elect any relief. He is entitled to protection before that

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[22] It is even unclear whether a §1983 damage suit will survive if the victim dies. See Robertson v. Wegmann, 436 U.S. 584, 594 (1978).

occurrence. See, e.g., Roe v. Wade, 410 U.S. 113 (1973); Allee v. Medrano, 416 U.S. 802 (1976); Steffel v. Thompson, 415 U.S. 452 (1974).

Neither Article III, nor this Court's decisions, require Lyons or the class he seeks to represent to accept the possibility of money damages in the face of a good faith defense, instead of the life and bodily integrity guaranteed by the Constitution.[23] Indeed, this Court's cases make clear that the theoretical possibilty of a damage action will not preclude application of the "capable of repetition yet evading review" exception to the mootness doctrine. See, e.g., Roe v. Wade, supra; Moore v. Ogilvie, 394 U.S. 814

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[23] See, e.g., Jones v. Hildebrant, 432 U.S. 183 (1977); Scheuer v. Rhodes, 416 U.S. 232 (1974).

(1969); Dunn v. Blumstein, 405 U.S. 330 (1972) (class action, although unclear whether class was actually certified).

D. Notwithstanding Its Failure To Certify the Class, the Relief Fashioned by the District Court was Appropriate

The City has attacked the scope of relief preliminarily fashioned by the trial court, because of that court's failure to certify the class. The attack is on Lyons' standing as an individual to seek the relief requested. However, the scope of the relief is a question of remedy -- rather than a constitutional problem of standing -- under traditional

equitable doctrines.[24] Lyons himself had a case or controversy with the City, and proved a violation sufficient to warrant preliminary injunctive relief. Thus he was entitled to an effective remedy. Marbury v. Madison, 1 Cranch 95, 5 U.S. 137 (1803); Bivens v. Six Unknown Agents, 403 U.S. 388 (1971). "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad . . . ." Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 14 (1971).

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[24]There is no need to constitutionalize the analysis of the preliminary remedy granted here. Any questions concerning the scope of the relief can be equally well resolved under basic principles of equity. See Davis v. Passman, 442 U.S. 228, 239, n. 18 (1979). This Court, which has agreed to decide questions of standing, should decline to reach the issue presented in Point I C of the City's Brief, especially in view of the policy change undertaken by the City.

Although the scope of the remedy must fit the nature of the wrong (Dayton Board of Education v. Brinkman, 433 U.S. 406 [1977]), the exercise of jurisdiction by a federal court without the capacity to provide effective relief to litigants would be inconsistent with Article III. Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 38 (1976). Accordingly, when necessary to redress a wrong, a court's equitable powers are broad indeed. Milliken v. Bradley (II), 433 U.S. 267 (1977).

The preliminary injunction entered below violated none of those principles. Indeed, the City has forthrightly conceded, as it must, that an "injunction protecting only the respondent would be essentially meaningless." City Br. 36. Lyons could hardly be

expected to avert further strangulation in a future encounter with police by waving a court order to officers as they approach. Accordingly, the decree, which simply limits the use of certain strangleholds to life-threatening situations, should be affirmed in light of the equitable factors, especially the risk of harm should relief not be granted.

Assuming arguendo that the harm suffered and feared by Lyons provided an insufficient basis for the relief granted, the question remains whether Lyons' attempt to certify a class subsequent to entry of the preliminary injunction provides the necessary support for the preliminary injunction approved below. The answer is yes. Under the "relation back" doctrine of Sosna v. Iowa, 419 U.S. 393 (1975) and

United States Parole Commission v. Geraghty, 445 U.S. 388 (1980), appellate courts may treat a class action which has not been timely certified by a district court as if it had been certified. See also Elrod v. Burns, 427 U.S. 347 (1976).

Because the putative existence of the class is not relied on to defeat a claim of mootness here, Weinstein v. Branford, 423 U.S. 147 (1975) is inapposite. In Weinstein, it was certain that the named plaintiff would not in the future be affected by the challenged policy, and plaintiff made no attempt to rely on the relation-back doctrine by appealing the failure to certify the class. See Geraghty, 445 U.S. at 400, n. 7.

The precise holding of Geraghty -- "an action brought on behalf of a class does not become moot upon expiration of

the named plaintiff's substantive claim, even though class certification has been denied" -- is not relevant here, since we do not believe that Lyons' claims have expired and do not rely on the putative existence of a class to support the presence here of a case or controversy. On that issue, we agree with the City (City Br. 39-40) that class proceedings could not enhance Lyons' standing. The case or controversy Lyons has with the City is as good as that possessed by any other determinate single member of the class.

However, beyond Geraghty's ruling that a named plaintiff whose claim was moot could appeal a wrongful denial of class certification, the Court also held that if successful on that appeal the class would be deemed certified as of the time certification was sought

(445 U.S. at 404) or even earlier if the challenged practice was capable of repetition yet evading review (445 U.S. at 399) (citing Gerstein v. Pugh, 420 U.S. 103, 110, n.11 [19]).

The Lyons I court of appeals' treatment of the preliminary injunction before it as a class action was not an abuse of its discretion. By the time the preliminary injunction was on review, the motion for class certification had been made. It was not timely dealt with as required by the federal rules because the City vigorously opposed it on the ground that decision of the class certification motion was "premature." City Br. 37. In these circumstances, assuming that Lyons has standing, then the court of appeals did not abuse its discretion by treating Lyons as a member of the class of persons similarly

affected and shaping its relief accordingly, pendente lite, under the reasoning of Geraghty.

## III. THE COURT OF APPEALS' DECISION COMPORTS WITH THE PRINCIPLES OF FEDERALISM

The court of appeals in Lyons II implicitly recognized the standards set down by this Court in Rizzo that an injunction is proper only in "extraordinary circumstances." 656 F.2d at 418. Fifteen strangulation deaths, coupled with the discriminatory impact on black males, are most extraordinary. No other municipality in the whole United States has a comparable police stranglehold death rate.

Lyons established the City's liability in the manner required by Monell v. Department of Social Services of the City of New York, 436 U.S. 658, 694 (1978). "[I]t is when execution of a government's policy or custom,

whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983."

The City argues that the preliminary injunction constitutes a "major displacement of municipal authority" violative of the principles of federalism. City Br. 41-47. This, despite the court of appeals' finding in Lyons II that the injunction was "relatively innocuous" in contrast to the sweeping structural relief granted in Rizzo. Pet.App. 29a. The City's argument, weak at the time it was made, has evaporated with the change of policy.

The City urges that the preliminary injunction "contains a latent ambiguity" in that the expression "serious bodily

harm" begs for definition. City Br. 42-43. This contention is incredible. The City expressly authorizes its police officers to use deadly force only in situations where death or "serious bodily injury" is threatened. A.231. Does the City suggest that the difference between the injunction's word "harm" and the City's word "injury" creates insurmountable confusion? If so, the suggestion is simply absurd.

The City's May, 1982 change of policy outlawing the bar arm control and placing all other strangleholds in the deadly force category (City's Memorandum Suggesting a Question of Mootness, 3-4) demonstrates that the City's "intrusive federalism" argument was a sham, as was recognized by the lower courts. One day the Chief of Police simply ordered his officers to stop using the bar arm con-

trol. A few days later, the Police Commission simply denominated stranglehelds to be "deadly force."

The City's laundry list of insurmountable "problems" (City Br. 43-44) was resolved without a whimper. The threatened "significant void in the LAPD's use-of-force police" (City Br. 44) turned out not to be significant at all. The threatened increased risk of death (Id.), wholly unsupported in the record, was apparently no threat at all. The City -- seventeen months and five deaths later -- now agrees with the district court that strangleholds constitute deadly force.

In fact, the City has "intruded" upon itself more radically than the injunction. The City outlawed the bar arm control, which was never required by the injunction. And the City placed the other strangleholds in the deadly

force category with no restraining relief available as there was in the injunction.

In sum, this Court should recognize that the City's "major displacement of municipal authority" and "unwarranted intrusion" arguments were and are specious.

Normally the federal judiciary should, on matters of police policy, "defer to those charged with responsibility for police administration." City Br. 46. But there is no legal support for the City's contention that a policy must be "outrageous" (Id.) or implemented by a "rogue government" (City Br. 47) in order for the federal judiciary to act. Acting under its power to enforce the Fourteenth Amendment, Congress has vested the federal courts with jurisdiction to decide

cases in equity where local officials are violating rights secured by the Constitution. When an official policy has in fact resulted in the violation of such rights, or threaten to do so in the future, courts have not merely the power but the duty to remedy and deter such violations. Hutto v. Finney, 437 U.S. 678, 687, n.9 (1978); Washington v. Washington State Commercial Passenger Fishing Vessel Association, 443 U.S. 658, 695-696 (1979).

Contrary to the City's contention (City Br. at 46), the Constitution requires not simply "rational official conduct," but compliance with the commands of the Due Process clause as well. If due process does not permit the police to apply deadly strangleholds to individuals stopped in routine circumstances which do not

threaten officers with death or serious bodily injury, then the courts may certainly enjoin such an official policy, as the district court did. Hutto v. Finney, supra; Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 14 (1971). Although one can certainly conceive of an injunction that would have violated equitable principles by being far broader than necessary, the simple prohibitory injunction entered and upheld below did not insert the court astride the daily workings of the police department, as in Rizzo; instead, it did no more than meet the court's duty to eliminate the condition that offended the Constitution.

## CONCLUSION

The judgment below should be affirmed or the writ dismissed.

Respectfully submitted,

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DATED: July 19, 1982

# Petitioner's Reply Brief

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No. 81-1064

IN THE

# Supreme Court of the United States

October Term, 1981

THE CITY OF LOS ANGELES,

*Petitioner*

*v.*

ADOLPH LYONS,

*Respondent*

**On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

## REPLY BRIEF FOR THE CITY OF LOS ANGELES

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TABLE OF CONTENTS

Page

I

The Case Is Not Moot ..... 1

II

The Standing Question Is Not Limited to the Preliminary Injunction ..... 3

III

Standing to Obtain Prospective Relief Requires a Meaningful Prospect of Injury ..... 6

A. Regulated Courses of Conduct ..... 8

B. Ongoing and Close Relationships Between Citizens and Government ..... 13

C. Injuries Capable of Repetition, Yet Evading Review ..... 15

IV

The Constitution Requires Substantial Deference to Police Officials on Matters of Police Policy ..... 16

V

The Respondent Misstates the Record ..... 18

Conclusion ..... 20

## TABLE OF AUTHORITIES CITED


| Cases | Page |
|---|---|
| Allee v. Medrano, 416 U.S. 802 (1974) | 9, 12 |
| Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252 (1977) | 11 |
| Blum v. Yaretsky, 50 U.S.L.W. 4859 (June 25, 1982) | 7, 13, 14 |
| Board of Education v. Rowley, 50 U.S.L.W. 4925 (June 28, 1982) | 15 |
| Carey v. Population Services International, 431 U.S. 678 (1977) | 11 |
| Clements v. Fashing, 50 U.S.L.W. 4869 (June 25, 1982) | 8, 9 |
| Cramp v. Bd. of Public Construction, 368 U.S. 278 (1961) | 11 |
| DeFunis v. Odegaard, 416 U.S. 312 (1974) | 2 |
| Doe v. Bolton, 410 U.S. 179 (1973) | 10 |
| Duke Power Co. v. Carolina Env. Study Group, 438 U.S. 59 (1978) | 14, 15 |
| Evers v. Dwyer, 358 U.S. 202 (1958) | 14 |
| Fuentes v. Shevin, 407 U.S. 67 (1972) | 9 |
| Gannett Co. v. De Pasquale, 443 U.S. 368 (1979) | 15 |
| Globe Newspaper Co. v. Superior Court, 50 U.S.L.W. 4759 (June 23, 1982) | 15 |
| Goldberg v. Kelly, 397 U.S. 254 (1970) | 14 |
| Golden v. Zwickler, 394 U.S. 103 (1969) | 16 |
| Hague v. C.I.O., 307 U.S. 496 (1939) | 9, 10, 12 |
| Hall v. Beals, 396 U.S. 45 (1969) | 16 |
| Jacksonville Bulk Terminals v. International Longshoremen's Assn., 50 U.S.L.W. 4789 (June 24, 1982) | 2 |
| Lankford v. Gelston, 364 F.2d 197 (4th Cir. 1966) | 12, 13 |

Page

Murphy v. Hunt, 50 U.S.L.W. 4264 (March 2, 1982) ..... 15

Nebraska Press Assn. v. Stuart, 427 U.S. 539 (1976) ..... 15

Nyquist v. Mauclet, 432 U.S. 1 (1977) ..... 10

O'Shea v. Littleton, 414 U.S. 488 (1974) ..... 6, 7, 13

Princeton University v. Schmid, 50 U.S.L.W. 4159 (January 13, 1982) ..... 15

Pullman-Standard v. Swint, 50 U.S.L.W. 4425 (April 27, 1982) ..... 4

Rizzo v. Goode, 423 U.S. 362 (1976) ..... 12

Roe v. Wade, 410 U.S. 113 (1973) ..... 10

Spomer v. Littleton, 414 U.S. 514 (1974) ..... 7

Truax v. Raich, 239 U.S. 33 (1950) ..... 11

Turner v. Fouche, 396 U.S. 346 (1970) ..... 11

United Public Workers v. Mitchell, 330 U.S. 75 (1947) ..... 12

University of Texas v. Camenisch, 451 U.S. 390 (1981) ..... 2

Weinstein v. Bradford, 423 U.S. 147 (1975) ..... 15, 16

Wooley v. Maynard, 430 U.S. 705 (1977) ..... 9

Youngberg v. Romeo, 50 U.S.L.W. 4681 (June 18, 1982) ..... 16, 17

Constitution

United States Constitution, Fourth Amendment ..... 12

Rule

Federal Rules of Civil Procedure, Rule 52(a) ..... 3

Treatise

11 C. WRIGHT, & A. MILLER, FEDERAL PRACTICE AND PROCEDURE (1973) ..... 4

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*Respondent*

## REPLY BRIEF FOR THE CITY OF LOS ANGELES

### I
### THE CASE IS NOT MOOT

The City has by memorandum suggested that the recent and experimental modifications of Los Angeles Police Department ("LAPD") control hold policy have not made this case moot. See Memorandum Suggesting a Question of Mootness and Addressing Related Issues 4-6 (June 2, 1982). The respondent begins his brief with a claim of mootness. On the basis of such modifications he maintains that there is "no need for a preliminary injunction" and that he no longer seeks one. Resp. Br. 1-2. He suggests that the writ of certiorari be dismissed as having been improvidently granted. *Id.* at 43-46. On June 14, 1982 the Court denied the respondent's motion therefor and reserved the mootness issue for consideration along with the merits. 50 U.S.L.W. 3982.

The respondent relies upon *University of Texas v. Camenisch*, 451 U.S. 390 (1981), a case which may be distinguished. It concerned a preliminary injunction ordering provision of a sign-language interpreter for the student plaintiff. During appellate proceedings, the defendant university supplied the interpreter and, subsequently, the plaintiff was graduated. The Court held that the preliminary injunction was moot because the defendant had "fully and irrevocably carried out" its terms. *Id.* at 398. Here, contrastingly, while the City has perhaps fully carried out the terms of the preliminary injunction, *it has not done so irrevocably*. Where the student plaintiff's graduation in *Camenisch* made moot any possible withdrawal of the interpreter, the City here is free to change its policy prior to trial on the merits.[1] Indeed, the inherent changeability of policy makes it nearly impossible (and probably socially undesirable) for policy-makers to attempt to formulate policies "irrevocably." See Memorandum Suggesting a Question of Mootness and Addressing Related Issues, *supra*, at 5. Moreover, the Court in *Camenisch* was quick to point out that mootness of a preliminary injunction does not necessarily moot an entire case. 451 U.S. at 393-394. As will be discussed immediately below, in the instant case the standing question before the

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[1]*Camenisch* resembles *DeFunis v. Odegaard*, 416 U.S. 312 (1974), a case made moot by the student plaintiff's impending completion of his studies. The Court there observed that mootness issues arising from a defendant's voluntary cessation of allegedly illegal conduct are altogether different. *Id.* at 317-318. The instant case, therefore, is more aptly analogized to other cases involving a defendant's change of conduct during the course of litigation, such as, a recent one involving a politically motivated work stoppage that was no longer in effect. The Court did not hold the case to be moot because "there remains a live controversy over whether the collective-bargaining agreement prohibits politically motivated work stoppages, and *the Union may resume such a work stoppage at any time*." *Jacksonville Bulk Terminals v. International Longshoremen's Assn.*, 50 U.S.L.W. 4789, 4790 n.1 (June 24, 1982) (emphasis added).

Court goes beyond whether the respondent had standing to obtain a preliminary injunction; it reaches the ultimate issue of whether the respondent may seek injunctive or declaratory relief of any kind.

II

**THE STANDING QUESTION IS NOT LIMITED TO THE PRELIMINARY INJUNCTION**

The respondent maintains that the Court must apply an abuse of discretion standard of review to the standing question, as opposed to a legal error standard, because the judgment immediately before the Court is the affirmation of a preliminary injunction. See Resp. Br. 47-49. He also takes the City to task for failing to demonstrate the existence of clearly erroneous findings under Fed. R. Civ. P. 52(a). *Id.* at 18 n.9. He contends, as well, that interlocutory review is not the "proper vehicle" for addressing the questions before the Court, *id.* at 46, asserting that further factual development would be helpful on the standing issue. *Id.* at 48-49 & n.16. These arguments fail to acknowledge that the standing question addresses not only whether the respondent has standing to seek a preliminary injunction, but also, more generally, whether he has standing to seek any permanent prospective relief. The broader inquiry is necessitated by the apparent absolute reliance below in *Lyons II* upon *Lyons I* on the issue of standing. In dealing with the more general problem, the Court will in so doing dispense with the more specific.

In *Lyons II* the district court erred not by making erroneous factual determinations respecting standing; but rather, by failing to make any such determinations whatsoever. It perhaps relied too heavily upon the court of appeals' determination in *Lyons I* that on the basis of his complaint the respondent had standing to seek declaratory and injunctive relief. Although in *Lyons II* the parties contested standing

in the preliminary injunction proceedings, see CR 70, 5:20-7:24; CR 74, 4:2-20, the district court did not address the issue. It may thus be presumed that the court of appeals' decision in *Lyons I* was regarded as definitive on the matter. It is for this reason that in the petition herein the City asked that the broader issue addressed in *Lyons I* be reviewed. See Pet. 13 & n.10. Inasmuch as the City thus challenges an error of law, as opposed to findings of fact, respecting standing, it is clear that neither abuse of discretion, see 11 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL §2962, at 636-637 (1973), nor clearly erroneous, *Pullman-Standard v. Swint*, 50 U.S.L.W. 4425, 4429 (April 27, 1982), is the applicable standard of review.

The respondent suggests that the present record makes review of standing difficult. Resp. Br. 48-49 & n.16. He claims that further proceedings might develop the "precise parameters of the official policy, which the City now claims . . . has been misunderstood" by the respondent and the courts below. *Id.* at 49 n.16. Such additional facts, he claims, would inform analysis of whether the "reality" and "immediacy" of the alleged threat to the respondent is sufficient. *Id.* The respondent's contention, however, fails to demonstrate precisely how additional facts might enhance his standing.

The respondent evidently is asking this Court to remand the case to the lower courts for clarification of the confusion which he himself has caused, but which is easily rectified on the present record. From the beginning, and even presently, the respondent has endeavored to maintain, if you will, an alternative case. The primary case posits the existence of an LAPD policy authorizing use of the control holds to control combative or resisting suspects. This is the case to which the proof of both parties has been directed. From time to time, however, and evidently when standing

becomes prominent as an issue, the respondent reverts to an alternative case grounded on a vaguely alleged policy, custom, or practice under which the holds are in some fashion routinely applied upon motorists. Thus, for example, he now states that until the moratorium was imposed in May, 1982, the LAPD allowed its officers to apply the holds "in a variety of routine, non-violent circumstances." Resp. Br. i. He asserts that to have subjected himself to the threat of injury, he needed only to "drive his car" and thereby "encounter the police." *Id.* at 61-62. These allegations call to mind the respondent's contention, in his opposition to the petition, that he is "pleading that as soon as you get stopped by Los Angeles police — even for a misdemeanor crime requiring no intent such as a burned out taillight — you may be strangled to death, as a matter of unconstitutional policy." Resp. Br. in Opp. Cert. 16.

The respondent's alternative case is patently nothing more than a red herring. Belying the notion that use of the control holds is routine are the data for the first quarter of 1981, during which the LAPD made 52,162 arrests, filed 212 altercation reports, and applied control holds 138 times. See City Br. App. 11a.

The respondent also suggests that interlocutory review is not the "proper vehicle" for deciding the questions before the Court. Resp. Br. 46. None of the cases cited by the respondent involved the jurisdictional issue of standing. Concerns going to whether interlocutory review is appropriate or whether the record could be enhanced in some fashion are not of great consequence where, as here, the issue is jurisdictional and the record more than adequately describes the effect LAPD policy can have on a citizen such as the respondent. There is no reason to believe that further

litigation would reveal the existence of a materially greater threat to the respondent. Litigation devoid of a genuine case or controversy should be terminated at the first opportunity.

## III
## STANDING TO OBTAIN PROSPECTIVE RELIEF REQUIRES A MEANINGFUL PROSPECT OF INJURY

The respondent maintains that standing to obtain prospective relief cannot be defined so simply as requiring that a plaintiff face a meaningful threat of injury. He contends that the Court has actually established different standards — if not by word, then by deed.[2]

The respondent states the following proposition:

> "The law is that an individual against whom a challenged policy has been applied ordinarily has standing unless it is nearly certain that the policy *cannot* affect him in the future."

Resp. Br. 51-52 (emphasis original; footnote omitted); see also *id.* at 64-65. The statement in *O'Shea v. Littleton*, 414 U.S. 488, 495-496 (1974) — that "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief, however, if unaccompanied by any continuing, present adverse effects" — is dismissed as *obiter dictum*. Resp. Br. 54 n.18. The respondent then discusses a number of cases, claiming that they indicate that (a) the threat here is not unlike that faced by plaintiffs who

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[2]He also points to the occasional statement by the Court that standing requires that a plaintiff have suffered *or* be threatened with injury. From this use of the disjunctive conjunction "or" the respondent deduces that his alleged injury somehow confers upon him standing to seek an injunction. Resp. Br. 50-52. The Court's use of the disjunctive, however, appears quite obviously to have derived from the need to make a complete and thus accurate statement of the law. Reference alone to those who have suffered injury necessarily omits those uninjured but in fear of injury, while reference only to those in fear omits those not in fear but injured. In those instances in which these disjunctive statements were made, they were not specifically tied to prayers for prospective or retrospective relief. The cases cited by the respondent stand for nothing more than this.

have been allowed to maintain actions for equitable relief, *id.* at 54-62; (b) where standing has not been found despite past injury, changed circumstances made it "extremely unlikely" that the challenged harm could recur to the plaintiff, *id.* at 63; (c) where standing has been found without past injury, the threat to the plaintiff was no greater than that faced by the respondent, *id.* at 63-64; and (d) standing has been denied where there is neither past harm nor a realistic threat of its occurrence. *Id.* at 64. The City hopes to demonstrate, through review of the same cases, that the respondent's analysis of them is grossly amiss.

First, one must begin with the respondent's utter disregard for the Court's statement in *O'Shea* that standing to obtain injunctive relief requires the existence of a "sufficiently real and immediate" threat. 414 U.S. at 496. That this standard remains the law is evidenced by the Court's recent reiteration of it in *Blum v. Yaretsky*, 50 U.S.L.W. 4859, 4861 (June 25, 1982). The respondent unsuccessfully attempts to characterize as *obiter dictum O'Shea's* statement that past exposure to illegal conduct does not alone confer standing to obtain prospective relief. That statement was not *dictum*, as it followed immediately the Court's observation that some of the plaintiffs had "actually been defendants in proceedings before petitioners and had suffered from the alleged unconstitutional practices." 414 U.S. at 495 (footnote omitted)[3]

Second, it should be noted that many of the cases upon which the respondent builds his analysis did not address

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[3]The respondent hints that a less rigorous view was expressed in the companion case of *Spomer v. Littleton*, 414 U.S. 514 (1974). Resp. Br. 60-61 & n.20, 65-66. *Spomer* turned entirely on the personal nature of the charges addressed against a former state's attorney. The Court did not indicate that the plaintiffs had standing to challenge the actions of the new state's attorney if similar to those of the predecessor.

standing *per se*; nonetheless, they are explicable using conventional standing principles. The cases appear to fall into three categories:

a. Where the plaintiff intends or can be expected to engage in a course of conduct regulated by the law and where, in the absence of judicial intervention, such conduct reasonably appears to subject the plaintiff to the threat of a resulting disability (e.g., arrest, prosecution, loss of employment).

b. Where there is an ongoing and close relationship between the plaintiff and government (e.g., governmental financial assistance) and where government threatens an action of importance to the plaintiff in connection with such relationship.

c. Where, under the capable of repetition, yet evading review doctrinal exception to mootness, the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration and there is a reasonable expectation or demonstrated probability that the plaintiff will be subjected to the same action again.

These cases are analyzed below.

### A. Regulated Courses of Conduct

Of the cases that come before the Court, many concern plaintiffs whose intended or expected courses of conduct have been frustrated by the threat of government action. Thus, for example, in a recent case challenging state constitutional provisions limiting eligibility to run for elective office, the Court deemed sufficient for standing purposes the plaintiffs' allegations that but for such limitations they would run for office. *Clements v. Fashing*, 50 U.S.L.W. 4869, 4871 (June 25, 1982). Many of the cases relied upon by the respondent are similar.

*Fuentes v. Shevin*, 407 U.S. 67 (1972), concerned a challenge to state replevin statutes under which sellers of goods could avail themselves of summary extrajudicial prejudgment seizure of them. One plaintiff sought declaratory and injunctive relief against "continued enforcement" of one of the statutes involved. *Id.* at 71. Although the Court did not specifically address the plaintiff's standing to seek such relief, it is not reaching to suppose that such plaintiff, having already suffered under the statute, could expect to be subjected again upon a subsequent purchase of goods on time. Installment sales were presumably commonplace then as today.

In *Wooley v. Maynard*, 430 U.S. 705 (1977), the Court's attention was drawn to a penal statute prohibiting obscuration of the state motto on vehicle license plates. The plaintiffs, who had done so, were genuinely threatened with prosecution. The husband plaintiff had been prosecuted for the offense three time in five weeks. *Id.* at 712. The plaintiffs obviously wished to continue with a course of conduct that they could reasonably expect to lead to their prosecution.

*Allee v. Medrano*, 416 U.S. 802 (1974), is of the same ilk. The action was brought by and on behalf of persons engaged in union organizing activities. *Id.* at 805 ns. 2, 3. The union organizers faced a concerted pattern of official obstruction, intimidation, and harassment which frustrated their organizing activities. It was clear that absent such official antipathy, their organizing efforts would resume. See *id.* at 810-811. *Hague v. C.I.O.*, 307 U.S. 496 (1939), also concerned union organizing activities impeded by official action. While the Court, in the three opinions supporting the judgment modifying the district court injunction, did not address the plaintiffs' standing to seek injunctive relief, one opinion noted that the district court found that

the plaintiffs had been threatened with "manifold and repeated persecution, and manifold and repeated invasion of their rights . . . ." *Id.* at 506. In both cases official conduct thus stood as a barrier to persons desirous of engaging in a particular activity.

*Nyquist v. Mauclet*, 432 U.S. 1 (1977), concerned a challenge to a state statutory citizenship requirement for any of three education assistance programs. The plaintiff challenging one of these programs, the loan program, was found to have standing although he had not been denied a loan. The Court relied upon such plaintiff's assertion that he "may require" such loans to complete his education. The plaintiff had been denied other forms of aid and would have been denied a loan. *Id.* at 6 n.7. A reasonable expectation of a loan application in the absence of the requirement was a legitimate inference.

*Doe v. Bolton*, 410 U.S. 179 (1973), and a companion case, *Roe v. Wade*, 410 U.S. 113 (1973), concerning standing issues associated with enforcement of state criminal abortion statutes. Pregnant women were held to have standing in *Roe*, even after the pregnancy's term, under the capable of repetition, yet evading review doctrine. 410 U.S. at 124-125. Physicians, being subject to the statute in question, were held to have standing in *Doe*. 410 U.S. at 188-189. But couples who endeavor to avoid pregnancy through abstinence or the use of contraceptives were held in *Roe* to face a threat that was speculative. 410 U.S. at 128. Thus, the threat of criminal prosecution was evidently thought to be a meaningful reality to some persons but not to others.

In *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252 (1977), the Court held that a redevelopment corporation had standing when its construction plans were frustrated by a certain municipal zoning action, *id.* at 261, while an individual plaintiff, eligible for residence in the proposed

housing, was found to have standing to challenge the zoning action as his desired residence in such housing would place him closer to his place of employment. *Id.* at 264. Both plaintiffs' chosen course of conduct was thus being frustrated by government action.

Governmental impediments to chosen courses of conduct stand as a ground of explanation of *Carey v. Population Services International*, 431 U.S. 678 (1977), in which a vendor of contraceptive devices had been threatened with prosecution under a state criminal statute. *Id.* at 682-683 & n.3. Similarly, in *Turner v. Fouche*, 396 U.S. 346 (1970), standing was conferred upon an individual, not a "freeholder," to challenge a freeholder requirement for service upon juries and school boards. The Court observed that it could be expected that officials would impose the requirement even in the absence of proof that it actually operated to exclude persons from service. *Id.* at 361 n.23.

Almost all of the other cases cited by the respondent may be similarly explained. *Truax v. Raich*, 239 U.S. 33 (1950), concerned an employer confronted by a state criminal statute restricting the employment of aliens and where such statute would require the plaintiff-employer to discharge an employee to avoid prosecution. *Id.* at 38-39. *Cramp v. Bd. of Public Construction*, 368 U.S. 278 (1961), involved a plaintiff-employee faced with loss of his public employment in refusing to sign a loyalty oath. His standing was held to survive the vague nature of the oath and his belief that he would prevail in a perjury prosecution brought for having made a false oath. A sufficient threat was perceived due to such vagueness in that "others could with reason interpret it differently." *Id.* at 284. In *United Public Workers v. Mitchell*, 330 U.S. 75 (1947), a federal government employee had been charged with unlawful activity under the Hatch Act and an order had been proposed to remove him.

*Id.* at 91-92. In each of these cases, the plaintiff was faced with a meaningful threat of future injury resulting from his or her intended course of conduct.

The case of *Lankford v. Gelston*, 364 F.2d 197 (4th Cir. 1966), is compatible with this analysis. The respondent claims that his circumstance is similar to that of the plaintiffs in *Lankford* and that this Court has cited that case "with approval" in *Rizzo v. Goode*, 423 U.S. 362 (1976). The respondent is incorrect on both points.

First, *Rizzo's* treatment of *Lankford* does not intimate approval or disapproval. The Court merely discussed *Lankford* as a case cited by the district court to demonstrate that it was not equating the failure of police supervisors to act (in *Rizzo*) with policies and pervasive patterns of practice (in *Hague* and *Allee*). *Lankford* was analogized to *Hague* and *Allee* as each involved established and deliberate practices. 423 U.S. at 373-375 & n.8. *Rizzo* did not analyze *Lankford* relative to whether the threat to the plaintiffs in that case sufficed for standing purposes.

Second, *Lankford* may itself be distinguished. The court of appeals did not address the issue of standing, although it did state that a damages remedy for homeowners whose homes were searched without probable cause would be inadequate. 364 F.2d at 202. The practice of the police there involved was a widespread, even "routine" disregard for the Fourth Amendment to which virtually anyone was subject. Homeowners would be subjected to such practices without any initiative or misconduct on their part. *Id.* at 201-202. Conversely, here the respondent cannot subject himself to the policy in question — use of the control holds to control resisting or combative suspects — unless he attacks or resists a police officer. The application of a hold absent any attack or resistance would be out of policy and in most instances would constitute excessive force *per se*.

The respondent's occasional allusion to routine application of control holds upon motorists stopped for traffic infractions admittedly draws his case closer to *Lankford*. But as discussed earlier, this case does not plausibly concern a policy, custom, or practice whereunder the LAPD routinely subjects motorists stopped for traffic infractions to the control holds.

**B. Ongoing and Close Relationships Between Citizens and Government**

Several of the cases relied upon by the respondent concerned ongoing and close relationships between citizens and their government and where government threatened actions that would have had a significant impact upon their lives. Most recently, in *Blum v. Yaretsky*, 50 U.S.L.W. 4859 (June 25, 1982), the Court considered two distinct threats to persons receiving medical care under a government program. The Court found a realistic threat of injury under the *O'Shea* standard relative to threats of facility-initiated discharges or transfers to lower levels of care. In this regard, the Court took into account "similar determinations already made by the committee of physicians chosen by the facilities to make such assessments. . . ." 50 U.S.L.W. at 4861. The Court did not find realistic, however, a threat of transfers to higher levels of care. In this regard the Court considered the absence of a history or an express threat of such transfers. *Id.* The Court also distinguished between the impact that one kind of transfer would have as opposed to the other upon the lives of the persons affected. Taking all of this into account, the Court distinguished between the two forms of transfer for purposes of standing. *Id.* at 4861-4862. *Blum* resembles *Goldberg v. Kelly*, 397 U.S. 254 (1970), where persons receiving governmental financial aid were challenging procedural aspects of termination. While some

of the plaintiffs had been given the pre-termination hearing they sought or had been restored to the rolls, there were at least two plaintiffs who had an ongoing dispute with the authorities such that a danger of termination remained. *Id.* at 256 n.2. These cases involved circumstances under which persons strongly dependent upon government programs have reason to believe that there may be a material change in them.

Two other cases cited by the respondent are explainable on the ongoing and close relationship basis. *Evers v. Dwyer*, 358 U.S. 202 (1958), appears upon reflection to turn on this rationale. While the person challenging a state segregated seating statute may have boarded a segregated bus only to bring the litigation, the Court reasoned that a "resident of a municipality who cannot use transportation facilities therein without being subject by statute to special disabilities has . . . a substantial, immediate, and real interest in the validity of the statute which imposes the disability." *Id.* at 204. Municipal transportation facilities are an important aspect of city life. *Duke Power Co. v. Carolina Env. Study Group*, 438 U.S. 59 (1978), is also perhaps best explained by this analysis. The plaintiffs before the Court were two organizations and forty individuals living "within close proximity" to planned nuclear facilities and were seeking declaratory relief. *Id.* at 67. The Court determined that at least some of the environmental consequences posed a threat "sufficiently concrete" to satisfy Art. III. *Id.* at 73-74. Environmental pollution is a meaningful reality to those exposed to it.

### C. Injuries Capable of Repetition, Yet Evading Review

The respondent also relies upon a number of cases involving the capable of repetition, yet evading review doctrinal exception to mootness. Notably in *Weinstein v. Brad-*

*ford*, 423 U.S. 147, 149 (1975), and *Murphy v. Hunt*, 50 U.S.L.W. 4264, 4265 (March 2, 1982), and most recently in *Board of Education v. Rowley*, 50 U.S.L.W. 4925, 4928 n.9 (June 28, 1982), the doctrine has been articulated as applying only to situations where the challenged action was in its duration too short to be fully litigated prior to cessation or expiration and where there was a "reasonable expectation" or "demonstrated probability" that the plaintiff would be subjected to the same action again.[4]

Rather than addressing the meaning of the expressions "reasonable expectation" or "demonstrated probability," the respondent instead turns to certain cases where mootness was found, some of which applied the doctrine, and thereupon attempts to use them as a springboard for arguing that if a plaintiff has suffered injury, standing for prospective relief exists unless it is "extremely unlikely" that the challenged harm could recur to the plaintiff. See Resp. Br. 63, relying upon *Murphy v. Hunt, supra*, 50 U.S.L.W. at 4265; *Princeton University v. Schmid*, 50 U.S.L.W. 4159, 4160 (January 13, 1982); *Weinstein v. Bradford, supra*, 423 U.S. at 148-149; *Hall v. Beals*, 396 U.S. 45, 48-50 (1969); *Golden v. Zwickler*, 394 U.S. 103, 108-110 (1969). In these cases the plaintiffs had not established a reasonable expectation or demonstrated probability of future injury. In holding that the cases were moot, the Court did not ask whether it was "extremely unlikely" that the plaintiff would again

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[4]Three of these cases concerned orders restricting press access to or coverage of criminal proceedings. *Globe Newspaper Co. v. Superior Court*, 50 U.S.L.W. 4759, 4761 (June 23, 1982); *Gannett Co. v. DePasquale*, 443 U.S. 368, 377-378 (1979); *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 546-547 (1976). In each, the Court applied the doctrine on the supposition that the publisher involved could reasonably be expected to be subjected to the same or similar order in the future.

suffer injury and, in making such minimal determination, conclude that the case was moot. The higher, not the lower, standard was applied.

## IV

## THE CONSTITUTION REQUIRES SUBSTANTIAL DEFERENCE TO POLICE OFFICIALS ON MATTERS OF POLICE POLICY

The respondent rejects the City's contention that actionability of police policies under the "life" and "liberty" provisions of the Due Process Clause requires outrageous and irrational conduct, in the absence of which the federal judiciary will defer to police officials. In response the respondent argues that the federal courts have "not merely the power but the duty" to rectify constitutional deprivations. See Resp. Br. 82-84.

The City cannot and would not take issue with the general proposition that the federal courts have a duty to enforce the Constitution, but the respondent erroneously presumes that the control hold policy violates substantive rights protected by the Due Process Clause. After conceding that "normally" the federal judiciary should defer to police officials on "matters of police policy," *id.* at 82, the respondent fails to demonstrate precisely how the policy in question constitutes a deprivation of substantive due process.

Most instructive for this purpose is the recent case of *Youngberg v. Romeo*, 50 U.S.L.W. 4681 (June 18, 1982), wherein the Court addressed the liberty interests of involuntarily committed, mentally retarded persons. The Court concluded that the recognized liberty interests in safe conditions and freedom from bodily restraint "are not absolute; indeed to some extent they are in conflict." *Id.* at 4684. To determine whether a liberty interest has been violated, it is necessary to balance the liberty of the individual and the demands of organized society. *Id.* In the custodial in-

stitution context, the individual's interest in liberty must be weighed against the need for restraint. *Id.*

The Court also stated in *Youngberg* that "[i]f there is to be any uniformity in protecting these interests, this balancing cannot be left to the unguided discretion of a judge or jury." *Id.* The "necessary guidance" and the "proper balance" the law achieves in requiring only that "professional judgment" was in fact exercised. *Id.* Such deference is reflective, first, of the federal judiciary's reluctance to intervene in the internal operations of state institutions and, second, of a recognition that there is no reason to believe that judges or juries are better qualified than "appropriate professionals" to make such decisions. *Id.* at 4684-4685.

It would appear that this very analysis is applicable to the encounters between citizens and police officers involved herein, on the condition that such professional determinations are subject to the ultimate control of officials responsible to the public. The first issue thus becomes whether use of the control holds is reflective of the exercise of "professional" judgment — *i.e.*, by persons "competent, whether by education, training or experience, to make the particular decision at issue." *Id.* at 4685 n.30. A constitutional deprivation arises only if the policy is "such a substantial departure from accepted professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment." *Id.* at 4685 (footnote omitted). The record amply demonstrates that the LAPD's control hold policy conformed generally to police practices accepted throughout the country and was the product of considerable study. See City Br. 11 & n.14, 12-14. The present moratorium is simply reflective of the legitimate debate occurring nationally among public officials and police professionals concerning the proper use of these holds. Under these circumstances the federal judiciary

should refrain from substituting its judgment for that of the public officials and professionals responsible for making police policy.

## V

## THE RESPONDENT MISSTATES THE RECORD

The respondent's brief makes a number of significant factual misstatements and omissions.[5] The most egregious of these are discussed below.

A. The respondent makes two extremely significant assertions of fact which have no basis in the record. The first is that "most of the major police departments" employing the control holds do so "only pursuant to *express policies* at the level specified in the district court's injunction — to wit, when serious bodily harm or death is threatened." Resp. Br. 36 (emphasis added). The second is that "[n]o other municipality in the whole United States has a comparable police stranglehold death rate." *Id.* at 78. These are important assertions indeed, but the respondent fails to identify their location in the record — no doubt because there is absolutely nothing in the record to support either one.

B. The respondent has made factual assertions and record references which he ascribes to the control holds generally (what the respondent terms "strangulation") but which in fact are limited to the infrequently applied and more dangerous bar arm technique. For example, Dr. Eichi Koiwai's reference to "excruciating pain" at A. 327 was made with specific reference to the bar arm technique. He specifically stated that the carotid holds should not cause pain. See EX 66, 22:1-24:4. The respondent conveys a

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[5]The respondent indeed repeats several such transgressions made in opposing the petition. See City Reply Br. Cert. 6-9.

different impression. See Resp. Br. 29. He also states that the "consensus" of the experts is that the control holds are "extremely dangerous." *Id.* at 31. This is not so. All of the City's experts concurred that the bar arm is a more dangerous hold than the carotid, but they also agreed that both holds will rarely result in death or serious bodily injury. See the discussion and record references at City Br. 19-20. The respondent's quotation of his expert, Mr. Bruce Tegner, leaves the distinct impression that his concerns pertain to the control holds generally. See Resp. Br. 31. It is clear from the record, however, that Mr. Tegner was referring primarily to the bar arm, not the carotid, technique. See A. 371; EX 63, 18:18-19:4. Furthermore, the respondent maintains that "[o]ne of the Army killing techniques Tegner taught was the LAPD bar arm control." Resp. Br. 32. Mr. Tegner stated that the hold taught by the United States Army is "[n]ot exactly but very similar to the methods that are depicted in the [LAPD] training bulletin." EX 63, 46:5-8. Actually, the difference between the Army's version and the LAPD's version is rather dramatic. The Army teaches continued application until death, EX 63, 47:8-21, whereas the LAPD bulletin prescribes use of only enough force to gain control. Pet. App. 41a, 48a.

C. The respondent blithely equates the control holds with criminal strangulation in one instance, see Resp. Br. 28, and in another with a technique used to prevent the swallowing of suspected narcotics. See *id.* at n.10.

D. The respondent states that LAPD officers "generally and callously" refer to the control holds as causing the subject to "do the chicken." *Id.* at 28. Neither the cited portion of the record, EX 44, 93:14-22, nor anything else in the record establishes that LAPD officers *generally* use such an expression.

E. The respondent unjustifiably persists in claiming that all the persons whose deaths have been *associated* with the holds were indeed "strangled to death" by them. See Resp. Br. i. As the City has maintained on a number of occasions, the precise causative role played by the holds (vis-a-vis other factors) in these deaths remains substantially undetermined. See Memorandum Suggesting a Question of Mootness and Addressing Related Issues 2-3; City Br. 19-20, 45-46. The current level of understanding concerning these deaths simply does not warrant placing the entire responsibility for them on the control holds. This said, the City recognizes that policy sometimes has to be formulated without the benefit of all the information desired — here, for example, in the absence of a satisfactory explanation of the fatalities.

F. The respondent includes in his list of parties himself "and all persons similarly situated." Resp. Br. iii. Inasmuch as class certification has yet to occur, strictly speaking there is presently no other plaintiff in the case other than the respondent.

## CONCLUSION

For these reasons and those set forth in earlier briefs of the City, the judgment of the court of appeals should be reversed, and the Court should direct dismissal of all claims for injunctive or declaratory relief.

Respectfully submitted,

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September, 1982

# Amicus Brief

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Supreme Court, U.S.
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No. 81-1064

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

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CITY OF LOS ANGELES,
*Petitioner,*

vs.

ADOLF LYONS,
*Respondent.*

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**On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

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## BRIEF OF AMICUS CURIAE, CITY OF SAN JOSE, CALIFORNIA, AND OTHER JOINING CITIES OF CALIFORNIA, IN SUPPORT OF PETITIONER

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## QUESTIONS PRESENTED

1. Does a plaintiff lack standing to request a federal court to enjoin a municipal police department from using a particular force technique against him and others where (a) he is not specifically threatened, (b) he has a remedy for damages, and (c) he represents only himself?

2. Does a federal court order constitute a substantial interference in the operation of a municipal police department where it (a) modifies policies concerning use of force and (b) takes control of such department's training and reporting systems relative to a particular force technique?

## TABLE OF CONTENTS

Page

Questions presented ..... i

Interest of amicus curiae ..... 1

Statement of the case ..... 3

Summary of argument ..... 3

Argument ..... 5

A. The facts as presented by this case do not merit intervention by the federal judiciary to alter the use of force policy of a local governmental agency on the basis that use of these restraints is "unconscionable" 5

B. Respondent has no standing to challenge the LAPD use of force policy regardless of whether class action certification has been sought ..... 14

C. Principles of federalism are implicated in this case .... 19

D. Respondent has an adequate remedy at law, in both federal and state courts ..... 22

Conclusion ..... 26

## TABLE OF AUTHORITIES CITED

### Cases

Page

*Allee v. Medrano*, 416 U.S. 802 (1974) ..... 16

*Allen v. McCurry*, 449 U.S. 90, 66 L.Ed.2d 308, 101 S.Ct. (1980) ..... 24

*Baker v. Carr*, 369 U.S. 186 (1962) ..... 23

*Baker v. McCollan*, 443 U.S. 137 (1979) ..... 26

*Elrod v. Burns*, 427 U.S. 347 (1976) ..... 21

*Estelle v. Gamble*, 429 U.S. 251 (1976) ..... 8

*Flast v. Cohen*, 392 U.S. 83 (1968) ..... 15, 17, 18

*Gregg v. Georgia*, 428 U.S. 153 (1976) ..... 8

*Griffin v. Breckenridge*, 403 U.S. 88 (1971) ..... 25

*Hague v. Committee for Industrial Organization*, 307 U.S. 496 (1939) ..... 16

*Jones v. Marshall*, 528 F.2d 132 (2d Cir. 1975) ..... 1

*Louisiana ex rel Francis v. Resweber*, 329 U.S. 459 (1947) .... 8

*Lyons v. City of Los Angeles (Lyons I)*, 615 F.2d 1243 (9th Cir. 1980), *cert. den.* 449 U.S. 934 (1980) ..... 1, 2, 4, 15, 18, 21 .24, 26

*Lyons v. City of Los Angeles (Lyons II)*, 656 F.2d 417 (9th Cir. 1981), *cert. granted* ..... U.S. ..... (February 22, 1982) ..... 1, 2, 4, 15, 21, 24, 26

*Mattis v. Schnarr*, 547 F.2d 1007 (8th Cir. 1976), *vac. sub. nom. Ashcroft v. Mattis*, 431 U.S. 171 (1977) ..... 1

*Monell v. New York City. Dept. of Social Services*, 436 U.S. 658, 690 (1978) ..... 23

*Monroe v. Pape*, 365 U.S. 167 (1961) ..... 24

*O'Shea v. Littleton*, 414 U.S. 488 (1974) ..... 15, 18, 21

*Owen v. City of Independence*, 445 U.S. 622 (1980) ..... 23

*Parratt v. Taylor*, ..... U.S ....., 68 L.Ed.2d 420, 101 S.Ct. ..... (1981) ..... 25

*Paul v. Davis*, 424 U.S. 693 (1975) ..... 11, 12, 25

## TABLE OF AUTHORITIES CITED (Continued)

### Cases


Page

*Peterson v. City of Long Beach*, 24 Cal. 3d 238 (1979) ..... 24

*Rizzo v. Goode*, 423 U.S. 362 (1976) ..... 4, 15, 17, 21, 24

*Rochin v. California*, 342 U.S. 165 (1951) ..... 11

*Screws v. United States*, 325 U.S. 91 (1945) ..... 5, 25

*Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976) ..... 18

*Swann v. Charlotte-Mecklenburg Board of Education*, 402, U.S. 1 (1971) ..... 21

*Warth v. Seldin*, 422 U.S. 490 (1975) ..... 18

*Williams v. Horvath*, 16 Cal. 3d 834 (1976) ..... 23

*Younger v. Harris*, 401 U.S. 37 (1971) ..... 22


### CONSTITUTION


United States Constitution
Article III, Section 2 ..... 14, 19
Fourteenth Amendment ..... 12


### STATUTES


California Tort Claims Act (Cal. Government Code Sections 810-996.6) ..... 23

California Government Code Section 825 ..... 23

California Penal Code Sections 830, 832, 13500-13507 ..... 2

Civil Rights Act of 1871 (42 U.S.C. Section 1983) 5, 6, 15, 23, 24, 26

Criminal Code Section 20 (now 18 U.S.C. Section 242.. ..... 5


### OTHER AUTHORITIES


Nagel, "Separation of Powers and the Scope of Federal Equitable Remedies," 30 *Stanford L. Rev.* 661 (1978) 20, 21

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## INTEREST OF AMICUS CURIAE

The aim of this lawsuit, from its inception and throughout its course, has been to alter the use of force policy of a local law enforcement agency. The decision on standing by the Ninth Circuit Court of Appeals in *Lyons v. City of Los Angeles*, 615 F.2d 1243 (1980) (hereinafter *"Lyons I"*), if not reversed, will subject every use of force policy of a local law enforcement agency to the vagaries of litigation by plaintiffs urging that unless they are permitted to challenge a particular use of force, they "might" be subjected again to whatever use of force procedure to which they have an objection, and their "continuing" and "real" fear of this possibility justifies their standing to challenge the use of force policy.

Similarly, the preliminary injunction issued by the District Court below, and affirmed in *Lyons v. City of Los Angeles*, 656 F.2d 417 (9th Cir. Aug. 17, 1981, modified Aug. 20, 1981) (mandate stayed pend. cert. Sept. 29, 1981) (hereinafter *"Lyons II"*), has broad impact on local law enforcement agencies. If allowed to stand, the preliminary injunction issued below will mean that the federal judiciary will be the final arbiter of the propriety, as a matter of constitutional law, of a wide range of law enforcement matters which are presently left to the realm of state legislatures, and to the discussions and debates of public policy by lawyers and law enforcement administrators. As in *Mattis v. Scharr*, 547 F.2d 1007, (8th Cir. 1976) *vac. sub nom. Ashcroft v. Mattis*, 431 U.S. 171 (1977), and as in *Jones v. Marshall*, 538 F.2d 132 (1975), the federal judiciary could well become so involved in the standards applicable to the daily con-

duct of police officers in controlling suspects that it is only proper to query whether such involvement is either necessary or appropriate based upon the facts presented in this case.

*Amicus Curiae* City of San Jose, like every city in the State of California, has a training program for its police officers which meets or exceeds the training standards developed by the Commission on Peace Officer Standards and Training of the State of California. By statute in California, peace officers of municipalities must at least meet the standards established by this Commission, or they cannot exercise the powers of a police officer. California Penal Code sections 830, 832, 13500-13507. The direction which this litigation has taken in imposing additional standards, based on the court's apparent perception that the present training of the Los Angeles Police Department (hereinafter "LAPD") is unconstitutional, is truly dismaying to *Amicus*. No particular use of force by an officer, nor any other use of force policy or training program, will be free from continual oversight by the federal judiciary if the preliminary injunction issued below is allowed to stand. This disturbing result is inevitable due to the lack of any clear constitutional standard utilized by the District Court in reaching its decision.

For these reasons, *Amicus Curiae* City of San Jose, and other cities joining in this brief, have an interest in supporting Petitioner in seeking this Court's reversal of the decisions in *Lyons I & II*. Therefore, *Amicus Curiae* submits this brief pursuant to Supreme Court Rule 36.4.

## STATEMENT OF THE CASE

*Amicus Curiae* adopts in full the statement of the case made by Petitioner City of Los Angeles.

## SUMMARY OF ARGUMENT

*Amicus Curiae* has previously submitted to this Court its arguments on the problems of standing and federalism, which are the primary problems for resolution by this Court. Brief of *Amicus Curiae* City of San Jose in Support of Petition for Certiorari (hereinafter "Br. of Amicus") pp. 5-15. These concerns of *Amicus* need not be readdressed here in full. Rather, since such a broad range of constitutional doctrines have been utilized as justifications for the decisions in *Lyons I & II*, it is appropriate to address at least a few of the numerous contentions made to this Court by Respondent in order to clarify the myriad of practical and legal problems presented to local law enforcement officials and their legal counsel by the decisions below.

First, *Amicus Curiae* contends that the "shocks the conscience" standard employed by the District Court to justify its decision that the use of these chokehold restraints is not permissible unless serious bodily injury or death is threatened, is not warranted on the facts involved in this case. The "constitutionality" of the LAPD's use of force policy, and its subsequent revision by the District Court, rests upon the determination that use of these holds in circumstances other than where "deadly" force is threatened is improper, and that determination is unjustified. This determination, along with the decision in

*Lyons I* on standing and the intrusive nature of the preliminary injunction affirmed in *Lyons II*, will involve the federal judiciary in basic local law enforcement administration to a far greater extent than was perhaps recognized by either the District Court or the Ninth Circuit Court of Appeals.

Secondly, *Amicus Curiae* contends that an Article III "case or controversy" is not established by the facts presented in *Lyons I & II*, regardless of whether class action certification has been sought. The adoption of a policy authorizing use of these chokehold restraints *prima facie* distinguishes this case from the decision in *Rizzo v. Goode*, 423 U.S. 362 (1976), but as will be discussed, the adoption of any use of force policy can arguably create a link between the conduct complained of, and the challenged policy, regardless of how carefully such a policy is structured. In this case, adoption of a policy on use of the challenged restraints does not invariably, or even regularly, derogate constitutionally protected rights. Since Respondent has failed to demonstrate other requisites for injunctive relief (namely, the continuing, adverse effects of the challenged policy upon Respondent, and the inadequacy of remedies at law), the mere existence of the challenged policy should not confer Article III standing whre it could not otherwise be obtained.

Thirdly, principles of federalism should have induced some circumspection in the issuance and affirmance of the District Court's preliminary injunction. The burden imposed on the Los Angeles Police Department administrators to devise new training and reporting procedures involving these challenged restraints is substantial and unwarranted.

Finally, adequate remedies at law are available to Respondent Lyons in both federal and state courts. California law alone would provide redress in damages for the injuries asserted by Respondent. Injunctive relief, under all the facts and legal doctrines implicated herein, was simply not necessary to respond to the injuries complained of.

## ARGUMENT

### A. The facts as presented by this case do not merit intervention by the federal judiciary to alter the use of force policy of a local governmental agency on the basis that use of these restraints is "unconscionable."

As a point of clarification, it is important to establish what is *not* disputed by Petitioner or *Amicus Curiae* herein. That citizens should not be subjected to unnecessary force by police officers acting under color of authority is accepted by both Petitioner[1] and *Amicus*. [*Cf. Screws v. United States*, 325 U.S. 91, at III (1945) (acts of officers are subject to provisions of section 20 of the Criminal Code (now codified at 18 U.S.C. section 242), criminal companion to 42

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[1]As stated in Petitioner's Reply Brief at page 5: "If the respondent now contends that the holds are being applied upon persons who are not legitimately in need of control—but rather, upon persons who have given no cause for the use of any force—the relative safety of the holds becomes entirely academic. Even if the holds were perfectly safe in all circumstances, police could not justify applying them upon persons who were not in need of control. Indeed, they could not justify using any level of force under such circumstances."

U.S.C. section 1983, whether they "hew to the line of their authority or overstep it."] That use of these chokehold restraints may have serious consequences, including injury or death, is not denied by Petitioner or *Amicus*. *See* Petition for Writ of Certiorari (hereinafter "Pet.") p. 11.

However, what most decidedly does appear to be at issue in this case is the definition of unnecessary or excessive force, because it is from this definition that the myriad of constitutional issues presented by Respondent arises. Furthermore, it is the very determination by the District Court that the use of these chokehold restraints is equivalent to deadly force that imposes upon the Los Angeles Police Department (hereinafter "LAPD"), as a matter of constitutional duty, the obligation to substantially revise its use of force policy, institute new training procedures, and commence reporting to the District Court on use of these holds. Thus, one of the many issues of serious concern to *Amicus*, and doubtlessly to Petitioner, is the "constitutional standard" employed by the District Court in issuing the preliminary injunction below, and the implications of utilizing that "standard" in future cases of constitutional adjudication.

In paragraph VII of the District Court's conclusions of law, the Court held that use of these restraints "as presently taught" in situations where death or serious bodily harm is not threatened, violates Fourteenth Amendment due process, substantive due process, and "shocks the conscience" of the Court. *See* Pet. p. 26a. If use of these holds is truly as inherently dangerous as Respondent Lyons would have this

Court believe, no amount of teaching of police officers could alleviate the concerns of the District Court in restricting these holds to situations where use of deadily force would be justified. *See* Respondent's Brief in Opposition to Writ of Certiorari (hereinafter "Br. in Opp."), at pp. 10-13. Therefore, setting aside the issue of training, it is appropriate to examine the standard employed by the District Court in limiting the use of these holds, in an attempt to discern its content and meaning.

Did the District Court find that use of these holds is "unconscionable" because their use may have serious, if unintended, consequences? If this is the basis for the Court's injunction, the Court indeed gave short shrift to the weighing of alternative force techniques, and their potential for injury or relative harm, which the LAPD administrators considered in structuring this use of force policy, and which policy has been reviewed and modified by committees and city officials three times since 1970. Pet. pp. 8-9. And if the purpose of the District Court's injunction is to avoid serious risks of death or injury in relationship to use of force policies, because assertedly high risks of either are "unconscionable", then alternative methods of subduing suspects are surely implicated in the District Court's decision.

How are the unconscionable, serious risks of injury or death to be defined, so as to give guidance to police administrators and their legal advisors as to the "constitutionality" of use of force policies such as the one employed by LAPD? As noted by Petitioner, the only statistical data before the District Court on fatalities allegedly caused by these "choke-

hold" restraints demonstrated that during an 18-month period, the holds were applied at least 975 times, and the Respondent contended that three persons died as a result of application of the holds. "Assuming *arguendo* that the fatalities were caused by the holds, these data yield a fatality rate of .31%". Pet. p. 21 n.7. Will a .31% risk of fatality serve as a constitutional benchmark for evaluating other methods of subduing suspects, thus resulting in their equation to or divergence from "deadly" force? What risk of fatality will be "constitutionally" acceptable as a means of subduing suspects?

These questions are posed as an attempt to ascertain exactly what swayed the District Court's determination that these restraints "shock the conscience," other than a determination that these holds *ex proprio vigore* are violative of the Constitution. If graphic descriptions of the potential effects of these restraints are by themselves sufficient to invoke federal injunctive relief, the decisions of this Court in interpreting, *inter alia*, constitutional guarantees under the Eighth Amendment would be far different. *See, e.g., Estelle v. Gamble*, 429 U.S. 251 (1976); *Louisiana ex rel Francis v. Resweber*, 329 U.S. 459 (1947). No depiction of injury or death is devoid of circumstances arousing empathy for the injured, or repugnance to the harm. Yet these sensibilities alone do not set the constitutional standards under which convicted men suffer the penalty of death, absent consideration of the available alternatives or the proportionality of the punishment to the crime. *See Gregg v. Georgia*, 428 U.S. 153, at 173 (1976), (opinion of Stewart, Powell, and Stevens, J.J., announcing the judgment of the

court; concurring opinions filed by White, J., Burger, C.J., and Rehnquist, J.) Nor should these sensibilities alone determine the overall constitutionality of a use of force policy of a local police department, absent consideration of the available alternatives and the proportionality of the risk of harm to the suspect in comparison with the other risks attendant in subduing violent or resistant suspects.

Other than issuing verbal commands to a suspect, there are no means of restraining a resistant suspect which do not have associated with them varying risks of pain, injury, and death to both parties to the encounter. In view of the risks which exist as a matter of course in law enforcement, the LAPD administrators have only done that which is responsible and logical: they have authorized a use of force policy which instructs officers to utilize only the minimal force necessary to subdue a resistant suspect, considering the risks inherent in all of the available alternatives. This policy does *not* authorize excessive force as a matter of routine law enforcement activity. It only authorizes that a particular level of force be utilized, in order to overcome the level of force utilized by a resistant suspect, and that the level of force either escalate or de-escalate in response to the degree of resistance, so as to safely bring that suspect under arrest.

Only the assumption of the District Court that use of these holds *ex proprio vigore* is somehow violative of the constitution, unless serious bodily harm or death is threatened, supports its determination of "unconscionability." Neither statistical data submitted to the District Court, nor results of surveys

submitted to this Court by both Petitioner and *Amicus*, support this conclusion. A limited survey on use of force policies of a variety of law enforcement agencies is helpful in this regard. *See* Appendix "B". The decree issued below makes no distinction between the bar arm and the carotid artery restraints. Some of the departments surveyed would not authorize use of the bar arm control hold, but do authorize use of the carotid. A few would authorize neither. Most would not restrict use of the carotid restraint to situations in which serious bodily injury or death is threatened. That use of some type of these chokehold restraints is widespread is also supported by data referred to by Petitioner, i.e., that of 60 law enforcement agencies surveyed in August, 1980, 90% authorized the carotid hold, 53.33% authorized the bar arm, and 56.67% authorized the chancery. Pet. p.7, n.7.

The fact that some disparity may exist in various police agencies as to what types of holds are authorized, and at what level of force, along with their apparent widespread use by many departments, only serves to indicate that no definitive consensus exists among law enforcement officials as to the proper placement of these chokehold restraints in an array of law enforcement techniques utilized to subdue resistant suspects. Yet the District Court, as a matter of constitutional compulsion, has made a determination that both the bar arm control hold and carotid restraint are not significantly different from each other, and that both are equal in deadliness to the use of an officer's service revolver. Will the federal judiciary, as a matter of constitutional compulsion,

now be confronted with pleas for rearranging the order of methods used to subdue resistant suspects based upon the risk of fatality from each, and the greater or lesser similarity of each method to "deadly force," basing each determination upon the degree of risk and/or the degree of pain assertedly associated with each method, as testified to by experts for plaintiffs or defendants? As noted in *Paul v. Davis*:

> "It is hard to perceive any logical stopping place to such a line of reasoning. Respondent's construction would seem almost necessarily to result in every legally cognizable injury which may have been inflicted by a state official acting under 'color of law' establishing a violation of the Fourteenth Amendment. We think it would come as a great surprise to those who drafted and shepherded the adoption of that Amendment to learn that it worked such a result . . . ." *Id.*, 424 U.S. 693 at 698-99 (1975).

The "shocks the conscience" standard utilized by the District Court, when examined in its factual setting and its implications for constitutional adjudication, comes to this: application or misapplication of the challenged holds *might* result in injury, and – sporadically – death, in some undetermined and unpredictable number of cases. Therefore, they are unconscionable and cannot be utilized unless "serious bodily injury or death" is threatened. This determination of the District Court represents constitutional adjudication by quantification of possibilities – and not by substantive delineation of guaranteed rights.

In *Rochin v. California*, 342 U.S. 165 (1951), this Court determined that a conviction obtained by pumping the defendant's stomach to recover two capsules of morphine was invalid as violative of the

Due Process Clause of the Fourteenth Amendment. The constitutional policy underlying that decision was not solely that the conduct itself was obnoxious or offensive. The actions of the governmental agents in that decision offended the rights guaranteed by the Constitution because they secured evidence from the defendant to be used against him in court by brute force, much as a coerced confession. *Id.* at 172-74. The Court stated: "(i)t would be a stultification of the responsibility which the course of constitutional history has cast upon this Court to hold that in order to convict a man the police cannot extract by force what is in his mind but can extract what is in his stomach." *Id.* at 173. The judgment of unconstitutionality was related to the permissible methods of obtaining evidence, and not solely to visceral reactions to the act of stomach-pumping itself.

In the present case, Respondent has attempted to rearrange the elements of a carefully structured use of force policy of a local law enforcement agency, on the basis that chokehold restraints are so dangerous that they are equivalent in deadliness to the use of a gun, and that their use is "unconscionable." Respondent has neither a consensus of experts nor an empirical statistical data base to support this contention. Petitioner's Reply Brief (hereinafter "Pet.R. Br.") p.8; Pet. p.7, n.7. As stated above, neither *Amicus* nor Petitioner contend that citizens should be subject to unnecessary force by police officers acting under color of authority. As demonstrated above, the logical implications of the "shocks the conscience" standard utilized by the District Court are far-reaching in their impact upon constitutional adjudication

of use of force policies. The method of determining equivalence to deadly force is most unclear.

One additional contention of Respondent's to this Court merits consideration. Respondent asserts that the policy on use of these restraints is confusing and ambiguous. Br. in Opp. pp. 5-6. This contention ignores many of the factual ambiguities as to when use of deadly force itself is appropriate.

A use of force policy which authorizes certain techniques to restrain a suspect, short of using deadly force (and in fact to avoid the use of a gun at all if possible), will have as one of its characteristics some ambiguity as to the precise moment when an alternative technique, short of using a gun, should be utilized. Even a factual determination as to when serious bodily injury or death is threatened, warranting a response with deadly force, is likely to have a range of uncertainties which are especially difficult of precise ascertainment during the course of a violent encounter between a suspect and an officer. Does a suspect threaten serious bodily harm or death upon reaching for a weapon? Is the weapon a board, a knife, or a gun? If the weapon is a board, is serious bodily injury threatened if the suspect strikes at the officer's legs? What if the suspect attempts to strike the officer's head with a board? Is the threat of serious bodily injury or death more imminent if the officer has ascertained that the object in the suspect's hand is not a board, but a knife or scissors? Even if the suspect reaches for an object which the officer knows is a gun, when is serious bodily injury or death threatened — upon reaching, or upon grasping, or upon aiming the gun? All of these questions are posed

as a means of demonstrating the inherent factual ambiguities in any encounter with a suspect – even in those encounters in which serious bodily injury or death is "imminent."

Thus a policy which authorizes other techniques to restrain or subdue a suspect, short of utilizing a gun – and in order to avoid use of a gun if at all possible – is certain to lack precision. If anything, the policy of the Los Angeles Police Department is well structured to avoid the use of the ultimate in deadly force – a gun – as well as to utilize only the minimal force necessary to bring a resistant suspect into lawful custody.

In conclusion, the preliminary injunction issued below, utilizing as it does the "shocks the conscience" standard, is unwarranted. It provides little substantive definition of that standard to be utilized by local governmental agencies in structuring use of force policies. The ramifications for potential litigation on use of force policies are wide-ranging and endless in their impact on local governmental agencies. If such an undefinable standard is to be imposed as a matter of constitutional compulsion on use of force policies by local law enforcement agencies, the federal judiciary will truly be involved on a day-to-day basis in the administration of local law enforcement agencies.

### B. Respondent has no standing to challenge the LAPD use of force policy, regardless of whether class action certification has been sought.

The concerns of *Amicus Curiae* herein with regard to the limitations imposed by Article III of the Constitution on standing to sue have been previously

addressed to this Court, and need not be repeated here *in toto*. In brief, those contentions are that Respondent did not demonstrate that the relief sought in *Lyons I*, and obtained and affirmed in *Lyons II*, "touch(ed) upon the legal relations of the parties," as no "continuing adverse effects" of the continuance of the challenged policy as to Respondent were adequately demonstrated. *See Flast v. Cohen*, 392 U.S. 83, 101 (1962); Br. of Amicus pp. 6-8; *O'Shea v. Littleton*, 414 U.S. 488, at 495-96 (1974). Additionally, *Amicus* challenged the determination of the Court of Appeals in *Lyons I* that standing existed because the "odds" that the challenged restraints would be utilized once again upon one in circumstances similar to those in Respondent's case were much greater here than in *O'Shea* and *Rizzo v. Goode*, 423 U.S. 362 (1976). *Amicus* contends that "odds" alone should not determine standing.

Respondent has attempted to distinguish this case from the decision in *Rizzo* by positing this case upon the existence of a use of force policy authorizing the use of the challenged restraints in circumstances which are assertedly unconstitutional, thereby subjecting, or causing to be subjected, persons to be deprived of thier constitutional rights within the meaning of 42 U.S.C. section 1983. Br. in Opp. p. 19. This "causal link" is *a priori* predicated upon a determination of unconstitutionality of this use of force policy, which of course would lead both the District Court and the Court of Appleals below to conclude that an affirmative link exists between the policy and the allegedly unconstitutional conduct. *Amicus Curiae* contends that the causal link between

the challenged use of force policy and the alleged deprivations of rights is more apparent than real.

Any authorized use of force policy by a local law enforcement agency carries with it the potential for "causing" injury or death. Such policies are adopted precisely to ameliorate that potential. The causative link asserted by Respondent is undermined by the admittedly sporadic incidence of injury of death allegedly caused by use of these holds.[2] The fact that this use of force policy has some inherent risks which are difficult to quantify does not supply the analogy to the pervasive pattern of police intimidation and misconduct which buttressed the injuctions issued in *Hague v. CIO*, 307 U.S. 496 (1939), and *Allee v. Medrano*, 416 U.S. 802 (1974), even though a governmental policy authorizes use of the challenged restraints. Respondent recognizes that this causative link is tenuous, at best, for Respondent relies upon the conclusion of the District Court that these holds "shock the conscience" and are equal to deadly force in order to sustain the contention that the policy by its mere existence "causes" the alleged injuries. This contention ignores the substantial efforts of the LAPD administrators to adopt an overall policy on use of force with the recognition that risks of harm were attendant in any such policy. Here, as in *Rizzo*, the sole causal connection found by the District Court between the Petitioner and the individual "Respondents" was that in the absence of a change in this use of force policy, the incidents were likely to continue to occur – if not with Respondent, then

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[2] Even the causative element of injuries allegedly resulting from application of these holds is disputed by the Parties to this case. Pet. p. 11; Br. in Opp. p. i; Pet. R. Br. p. 9.

with the class he claims to represent. *Rizzo, supra,* at 371.

Respondent contends that unless standing is conferred herein, it would not be possible to challenge police policies mandating that black males be shot for traffic violations. Br. in Opp. p. 21. This contention does not comport with prior standing decisions of this Court. If such a policy did exist, it would be both "appropriate and necessary" to look to the substantive issues of that hypothetical case to determine whether there was "a logical nexus between the status asserted and the claim sought to be adjudicated." *Flast v. Cohen, supra,* at 101-02. The causative link between such a policy and its impact on an injured plaintiff, and the logical nexus of such a policy to the status asserted and the claim to be adjudicated under that hypothetical, would doubtless be far clearer than in this case. Respondent has, throughout this case, rested all the varying legal doctrines implicated herein upon the analogy of these restraints to deadly force. As discussed in Part A above, that analogy is unwarranted; and this particular contention is baseless.

Finally, Respondent asserts that unless standing is conferred, federal courts will be powerless to stop "regular" deprivations of constitutional rights "in a fleeting manner on randomly selected (but disproportionately black male) persons . . ." Br. in Opp. p. 22. This contention also rests upon the assumption that any use of these holds in circumstances other than when use of a gun would be authorized is violative of constitutional guarntees. Otherwise, "regular" deprivations of those guarantees do not occur under

this challenged policy. This contention of Respondent's places the proverbial cart before the proverbial horse. "The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues which he wishes to have adjudicated." *Flast v. Cohen*, *supra*, at 99.

The problem of whether Respondent has standing to seek the injuctive relief obtained is not resolved by treating this case as a class action. This Court has repeatedly indicated that "if none of the plaintiff's purporting to represent a class establishes the requisite of a case or controversy, none may seek relief on behalf of himself or any other member of the class." *O'Shea v. Littleton*, *supra*, at 494 (citations and footnote omitted). *See also Warth v. Seldin*, 422 U.S. 490, 498-99 (1975); *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 40 p. 20 (1976).

Respondent has not established the requisite for injuctive relief delineated in *O'Shea*: "Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief, however, if unaccompanied by any continuing adverse effects." *Id.* at 495-96. The continuing adverse effects asserted by Respondent are *fear of* future injury. Br. in Opp. p. 20. Equitable relief based on this contention would also involve other basic requisites of injunctive relief where principles of federalism are implicated, namely, the likelihood of substantial and immediate irreparable injury, and the inadequacy of remedies at law. *O'Shea*, *supra*, at 502.

In sum, the determination in *Lyons I* on the standing issue does not comport with prior decisions of this Court. Neither the mere adoption of this particular use

of force policy, nor the potential and sporadic adverse effects of following the challenged policy, raises this dispute to the stature of an Article III, Section 2 "case or controversy" for the purpose of injunctive relief, especially since the facts in this case do not demonstrate systematic attempts to continually act in derogation of constitutionally protected rights. Even accepting that the challenged chokehold restraints were applied to Respondent "without provocation or justification" (i.e., in the absence of any physical resistance to arrest at all by Respondent), this event by itself should only provide standing to sue the individuals involved in the incident. The rights of the entire citizenry of Los Angeles, of whatever race, are not so intertwined with the facts presented herein as to merit the intervention of the federal judiciary.

### C. Principles of federalism are implicated in this case.

The preliminary injunction issued below enjoins use of both the carotid artery and bar arm control holds under circumstances which do not threaten death or serious bodily injury. It requires Petitioner to secure the court's approval of a police training program, including a "detailed" written training manual, prepared by "qualified" individuals, in addition to establishing "appropriate practical training sessions" for LAPD police officers. It further orders that *all* applications of the holds be reported to the Petitioner within 48 hours after use of such holds, and that the records of such reports be maintained in a manner allowing the District Court "ready access" to such records upon twenty-four hours notice.

In issuing this injunction, the District Court made a judgment which can only be characterized as executive or legislative in nature, in an area where even the California legislature has foregone express prohibition or limitation of these holds. Assuming *arguendo* that use of any of these holds is very restricted by most law enforcement agencies in California, if not the nation, the determination as to their effectiveness in relation to other types of restraints, and the relative advantage or disadvantage of allowing such chokehold restraints to be utilized as one method of subduing a resistant suspect among a range of other options, is a determination involving such intricate fact-weighing that it should only be made by the federal judiciary when the constitutional policy underlying the determination, and the facts supporting it, are clear. Otherwise, the judicial determination intrudes deeply into functions traditionally left to coordinate branches of government – here, the executive function of a local government.

> "Because courts deal only with specific cases and controversies, their remedies are necessarily specific and detailed to some extent. Judicial orders traditionally control specific conduct, including executive conduct. In constitutional cases, however, the court's function often is to enforce very general mandates such as due process. Detail in decrees enforcing such broad mandates is relevant to measuring the depth of the judiciary's intrusion into the functions of other branches.
> "When the constitutional language is broad, the judicial function is to articulate the broad policies contained in the Constitution, and to determine whether existing conditions are in compliance. The classical function of the executive is to decide detailed questions about how to implement constitutional policies. Therefore, a judi-

> cial decree specifying in detail how policy should be implemented intrudes deeply into the executive function . . . ." Nagel, "Separation of Powers and the Scope of Federal Equitable Remedies," 30 *Stanford L. Rev.* 661, 708-09 (1978).

Although this Court has indicated that separation of powers principles are not strictly applicable to relationships between the federal judiciary and the states [*Elrod v. Burns*, 427 U.S. 374 (1976)], the decisions of this Court in *O'Shea* and *Rizzo* demonstrate similar concerns for the intrusiveness of federal equitable relief directed toward the administration of state or local agencies. In *Lyons I & II*, as in *Rizzo*, Respondent contends that he has a constitutional "right" to be protected from unconstitutional exercises of police power, and therefore "a right to mandatory equitable relief when those in supervisory positions do not institute steps to reduce the incidence of unconstitutional police misconduct."

> "The scope of federal equity power, it is proposed, should be extended to the fashioning of prophylactic procedures for a state agency designed to minimize this kind of misconduct on the part of a handful of its employees. But on the facts of this case, not only is this novel claim quite at odds with the settled rule that in federal equity cases 'the nature of the violation determines the scope of the remedy', [citing to *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 at 16 (1971)], important considerations of federalism are additional factors weighing against it. Where, as here, the exercise of authority by state officials is attacked, federal courts must be constantly mindful of the 'special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law.' (citations omitted.)" *Rizzo, supra*, at 378.

The intrusiveness of this preliminary injunction into the daily conduct of a local law enforcement agency is dramatic. Not only are the options of police officers in utilizing varying methods of subduing suspects sharply curtailed, but the LAPD administrators themselves are mandated to revise their training procedures in order to meet some undefined standard of satisfaction favored by the District Court. The injunction clearly establishes the basis for further intervention if the training program, training manuals, or reporting system are not "satisfactory" to the District Court. The potential for endless tinkering with the establishment and implementation of use of force policies by local law enforcement agencies is enormous under this decree. This result is particularly unjustifiable in view of the fact that adequate remedies at law are available in both federal and state courts. Principles of equity, comity, and federalism must restrain the result reached in this case, or little will serve to restrain the federal judiciary from interjecting itself into the daily operation of municipal police departments.

### D. Respondent has an adequate remedy at law, in both federal and state courts.

As stated in *Younger v. Harris*, 401 U.S. 37 (1971), a basic doctrine of equity jurisprudence is "that courts of equity should not act, and particularly should not act to restrain a criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." *Id.* at 43. Assuming *arguendo* that Respondent had established a violation of a constitutional right, standing to seek damages as a remedy

for the due process denied him would exist, as the Respondent's "personal stake in the outcome" of such an action would be far more clear than exists in this action for equitable relief. *Baker v. Carr*, 369 U.S. 186, 204 (1962). Both *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690 (1978), and *Owen v. City of Independence*, 445 U.S. 622 (1980), demonstrate the adequacy of the remedy available to Respondent in federal court pursuant to the Civil Rights Act of 1871, 42 U.S.C. section 1983.

Neither the courts nor the legislature of the State of California are insensitive to the necessity of providing remedies to parties injured by police officers. The California Tort Claims Act (Cal. Government Code sections 810-996.6) provides a comprehensive legislative scheme for remedying injuries from tortious acts or omissions by public officers and employees. The California Supreme Court has declared that the indemnification provisions of Government Code section 825 are applicable in actions in state courts based upon 42 U.S.C. section 1983.[3] *Williams v. Horvath*, 16 Cal.3d 834, 838 (1976). Additionally, under California law as interpreted by the State Supreme Court, the failure of a police officer to follow

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[3]California Government Code section 825 provides in relevant part:

"If an employee or former employee of a public enity requests the public entity to defend him against *any* claim or action against him for an injury arising out of an act or omission occurring within the scope of his employment as an employee of the public entity, and such request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed." (Emphasis added.)

established departmental guidelines on use of firearms creates a presumption of lack of due care. *Peterson v. City of Long Beach*, 24 Cal.3d 238 (1979). California law applicable to public agencies both adequately provides a remedy to parties claiming injury such as Mr. Lyons, and exerts considerable pressure on local governmental agencies to implement use of force policies which do not authorize routine excessive force, and to insure that such reasonable policies are followed by public employees.

In view of a clear availability of other means of redress for the injuries asserted by Respondent, the preliminary injunction issued below violated a basic precept of equitable relief, as well as ignoring the principles of federalism delineated in *Rizzo*. Additionally, the decisions in *Lyons I & II* implicate other issues involving the proper scope of actions brought pursuant to 42 U.S.C. section 1983. On two prior occasions, this Court has indicated that 42 U.S.C. section 1983 was intended as a federal remedy in three circumstances: "where state substantive law was facially unconstitutional, where state procedural law was inadequate to allow full litigation of a constitutional claim, and where state procedural law, though adequate in theory, was inadequate in practice." *Allen v. McCurry*, 449 U.S. 90 (1980), 66 L.Ed.2d 308, 317, citing to *Monroe v. Pape*, 365 U.S. 167, 173-174 (1961).

*Amicus Curiae* has already addressed its concern that the application of the "shocks the conscience" standard is unwarranted on the facts presented herein. Thus *Amicus Curiae* contends, the constitutional validity of this use of force policy should not be the

central concern of this Court. State procedural law for redressing the injuries claimed herein is adequate in theory and in practice. As a pragmatic matter, there is no compelling reason for this litigation to even be brought in federal court, as the injury claimed herein could be fully and adequately addressed by a tort action in state court proceedings.

Other than the bald assertions of Respondent, which were all too readily accepted by the District Court, that use of these holds is only "constitutional" where use of "deadly force" would be "constitutional", "Respondent . . . has pointed to no specific constitutional guarantee safeguarding the interest he asserts has been invaded."

> "Rather, he apparently believes that the Fourteenth Amendment's Due Process Clause should *ex proprio vigore* extend to him a right to be free of injury wherever the State may be characterized as the tortfeasor. But such a reading would make of the Fourteenth Amendment a font of tort law to be superimposed upon whatever systems may already be administered by the States. We have noted the 'constitutional shoals' that confront any attempt to derive from congressional civil rights states a body of general federal tort law, *Griffin v. Breckenridge*, 403 U.S. 88, 101-102 (1971); *a fortiori* the procedural guarantees of the Due Process Clause cannot be the source for such law." *Paul v. Davis, supra*, at 700-01.

As noted in *Screws v. United States, supra*, "(v)iolation of local law does not necessarily mean that federal rights have been invaded. The fact that a prisoner is assaulted, injured, or even murdered by state officials does not necessarily mean that he is deprived of any right protected or secured by the Constitution

or laws of the United States." *Id.*, 325 U.S. at 108-09. Absent a constitutional violation, *any* remedy pursuant to 42 U.S.C. section 1983 simply cannot be obtained. *See Baker v. McCollan*, 443 U.S. 137 (1979); *Parratt v. Taylor* ..... U.S. ....., 68 L. Ed.2d 420 (1981).

In summary, there are serious problems underlying this action for equitable relief which extend beyond the propriety of injunctive relief against a local governmental agency. While this Court is not directly confronted with resolving the complex issue of the proper constitutional scope of a 42 U.S.C. section 1983 action where bodily injury or death has occurred as a result of the actions of a police officer, as the problems of standing and federalism predominate in this case, the problems confronting this Court are exacerbated by the fact that substantial arguments can be made that the conduct of the police officers herein was perhaps tortious, but did not violate any rights guaranteed by the Constitution. In any event, Respondent herein has an adequate remedy at law, and there exists no basis for the massive intervention of the federal judiciary to revise the use of force policy of the LAPD on the facts presented by this case.

## CONCLUSION

On the facts presented herein, the decision on standing by the Ninth Circuit Court of Appeals in *Lyons I* should be reversed. The preliminary injunction issued by the District Court, and affirmed in *Lyons II*, is simply too intrusive on the daily functions of local law enforcement agencies to countenance its continuance, and *Lyons II* must also be reversed. For

the numerous compelling reasons discussed herein, and in the prior brief submitted by *Amicus, Amicus Curiae* supports Petitioner City of Los Angeles and urges reversal of the decisions below.

Respectfully submitted,
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**(Appendices follow)**

# Appendix "A"

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## Appendix "B"

From November 9th through November 12th, 1981, a survey of the following police agencies in California was conducted by the San Jose Police Department, regarding whether use of the carotid restraint was authorized by the surveyed agencies:

1. Alameda County Sheriff's Office
2. Anaheim Police Department
3. Bakersfield Police Department
4. San Mateo Sheriff's Office
5. Burlingame Police Department
6. Salinas Police Department
7. Calaveras County Sheriff's Office
8. Campbell Police Department
9. Contra Costa County Sheriff's Office
10. Richmond Police Department
11. El Dorado County Sheriff's Office
12. Fresno Police Department
13. Kern County Sheriff's Office
14. Santa Clara County Sheriff's Office
15. Mountain View Police Department
16. Humboldt County Sheriff's Office
17. Monterey County Sheriff's Office
18. Santa Barbara Police Department
19. Santa Clara Police Department
20. Menlo Park Police Department
21. Merced County Sheriff's Office
22. Milpitas Police Department
23. Oakland Police Department
24. San Diego Police Department
25. San Diego Sheriff's Office
26. San Francisco Police Department
27. Sacramento Police Department
28. Sacramento Sheriff's Office
29. Vacaville Police Department
30. Vallejo Police Department

Of the foregoing police agencies, only the Police Departments of Salinas, Menlo Park, and Fresno prohibited use of the carotid restraint and had written policies against its use. Fresno Police Department did not authorize use of the restraint because it had no training program.

Appendix "B" (Continued)

Of the thirty agencies surveyed above, twenty-five did not restrict use of the carotid restraint to circumstances warranting deadly force. Four agencies, the Police Departments of Salinas, Menlo Park, and Fresno, and the Monterey County Sheriff's Office, indicated that in the view of their agencies, use of the carotid restraint should be limited to circumstances warranting deadly force. Sacramento Police Department indicated that in its view, the carotid restraint should be used just prior to the duty weapon.

From March 23, 1982, to April 6, 1982, Sgt. Dan Jensen of the San Jose Police Department conducted a survey of the following agencies on behalf of *Amicus Curiae*:

1. Chicago Police Department
2. Boston Police Department
3. United States Army (Fort McClellan)
4. Beverly Hills Police Department
5. Glendale Police Department
6. Santa Monica Police Department
7. South Pasadena Police Department
8. New York Police Department
9. California Highway Patrol
10. Los Angeles County Sheriff's Department
11. San Diego County Sheriff's Department

The Police Departments of Chicago and New York prohibit use of the bar arm control hold, but authorize use of the carotid restraint at levels of force less than deadly force. The New York Police Department indicated that its officers are allowed to use the carotid restraint any time a suspect becomes physically

combative and cannot be controlled by the use of verbal threats or wrist locks. The United States Army Military Police still train in the use of both the carotid and bar arm control holds, and this agency indicated that although their policy on use of these holds in recent years has become more restrictive, both holds are authorized in physical confrontations at a level of less than deadly force. This agency also oversees the training of the United States Marine Military Police, which is the designated security force for the United States Navy, and the policies for both branches of the military police are identical. The Boston Police Department indicated that it neither teaches nor prohibits use of "chokeholds."

All other agencies listed immediately above indicated that in training of police officers, their agencies emphasized and recommended use of the carotid artery hold, and recommended against use of the bar arm. All of these agencies authorized use of the carotid artery hold at low levels of force.

# Amicus Brief

2

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ON A WRIT OF CERTIORARI TO THE
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# BRIEF OF THE LOS ANGELES POLICE PROTECTIVE LEAGUE, JOINED BY AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., AND THE NATIONAL SHERIFFS ASSOCIATION, INC., AS AMICI CURIAE IN SUPPORT OF PETITIONER

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## TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES.....ii

STATEMENT OF JURISDICTION.....1

INTEREST OF AMICI.....2

SUMMARY OF ARGUMENT.....10

ARGUMENT .....11

I. THE COURT OF APPEALS' RULING IN LYONS I CONTRAVENES THIS COURT'S PREVIOUS DECISIONS ON "STANDING."....11

II. THE COURT OF APPEALS' RULING IN LYONS II REPRESENTS AN UNWARRANTED ENXTENSION OF FEDERAL COURT SUPERVISORY POWER.....20

CONCLUSION.....24

## TABLE OF AUTHORITIES

Page

### Cases


Allee v. Medrano (1974)
416 U.S. 802, 94 S.Ct. 2191,
40 L.Ed. 2d 566.....15, 16

Ashcroft v. Matthis (1977)
431 U.S. 171, 97 S.Ct. 1739,
52 L.Ed.2d 219.....15

Baxter v. Palmigiano (1976)
425 U.S. 308, 96 S.Ct. 1551,
47 L.Ed.2d 810.....18

Gladstone, Realtors v. Village
of Bellwood (1979)
441 U.S. 91 .....12

Hague v. CIO (1939)
307 U.S. 496, 59 S.Ct. 954,
83 L.Ed. 1423.....15, 16

Lyons v. City of Los Angeles
615 F.2d 1243 (9th Cir. 1980),
cert. denied, 449 U.S. 934.....5, 10
(1980).....11, 15-17

Lyons v. City of Los Angeles
656 F.2d 417 (9th Cir.,
August 17, 1981, modified
August 20, 1981) (per curiam)
mandate stayed pndg. cert.,
___ U.S. ___, 102 S.Ct. 14,
69 L.Ed.2d 1015 (September 30,...5, 9
1981) .....10, 20

Page

Monell v. New York City Department of Public Social Services (1978) 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611.....18, 19

O'Shea v. Littleton (1974) 414 U.S. 488, 94 S.Ct. 669, 38 L.Ed.29 674.....10, 13

Owen v. City of Independence (1980) 445 U.S. 622, 100 S.Ct. 1398, 63 L.Ed.2d 673.....19

Rizzo v. Goode (1976) 423 U.S. 362, 96 S.Ct. 598, 10, 13 46 L.Ed.2d 561.....21, 22

Scruggs v. Haynes (1967) 252 Cal.App.2d 256.....19

Simon v. Eastern Ky. Welfare Rights Org. (1976) 426 U.S. 26.....12

Valley Forge, etc. v. Americans United, etc. (1982) ___ U.S. ___, 102 S.Ct. 752, 10 70 L.Ed. 2d 700.....12-15

Warth v. Seldin (1975) 422 U.S. 490.....14

Weinstein v. Bradford (1975) 423 U.S. 147, 96 S.Ct. 347, 46 L.Ed.2d 350.....17, 18

Younger v. Harris (1971) 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669.....10, 21

Page

**Statutes**

42 U.S.C. §1983.....18

**United States Constitution**

Article III.....11-13

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## STATEMENT OF JURISDICTION

In accordance with Rule 36 of the Rules of the Supreme Court, these Amici have obtained written consent by counsel

for both parties to file this brief. Copies of these letters of consent have been lodged with the Clerk of this Court.

## INTEREST OF THE AMICI

The Los Angeles Police Protective League (hereinafter "the League") is a voluntary, fraternal organization consisting of approximately 6,500 members of the Los Angeles Police Department. The League is certified and recognized by the City of Los Angeles as the employee organization for the Los Angeles Police Department (hereinafter "LAPD"), and it represents its members in employment, disciplinary, and legal matters.

Americans for Effective Law Enforcement, Inc., (hereinafter "AELE") is a

non-profit educational organization that provides training, legal research assistance, and professional consultation for the law enforcement community. Founded in 1966, AELE has appeared in the United States Supreme Court and lower tribunals as Amicus Curiae in numerous cases on behalf of professional law enforcement. Since 1974, the organization has sponsored 24 three-day seminars on civil rights and on legal responsibilities of police executives and their legal counsel, on a nationwide basis. Currently, AELE publishes five periodicals which assist law enforcement personnel in their efforts to suppress crime. In addition to its professional staff, AELE is comprised of several thousand citizen supporters.

The International Association of Chiefs of Police, Inc., (hereinafter "IACP") is a voluntary professional organization established in 1893 to further the science of police administration and promote professionalism in policing. IACP is comprised of Chiefs of Police and other law enforcement personnel from all fifty states and sixty-two foreign nations. Of its 12,600 members, over seventy percent hold command positions in the United States law enforcement field.

The National Sheriffs Association, Inc. (hereinafter "NSA") is a non-profit organization that provides training and assistance to State Sheriff Associations. Founded in 1940, NSA is comprised of 50,000 members. Among its activities, this organization conducts

nationwide training seminars and publishes a bimonthly periodical.

On behalf of their national and international memberships, these Amici possess a significant interest in this Court's review of the decisions of the Court of Appeals for the Ninth Circuit in **Lyons v. City of Los Angeles**, 615 F.2d 1243 (9th Cir. 1980), cert. den., 449 U.S. 934 (1980) (hereinafter "**Lyons I**") and **Lyons v. City of Los Angeles**, 656 F.2d 417 (9th Cir., August 17, 1981, modified August 20, 1981) (per curiam) mandate stayed pndg. cert., ___ U.S. ___, 102 S.Ct. 14, 16, 69 L.Ed.2d 1015 (September 29, 1981) (hereinafter "**Lyons II**"). If these decisions are allowed to stand, these Amici believe that there will be a substantial adverse impact on (1) public and police officer safety,

and (2) the independent administration of local police functions.

As to this first concern, the judicial prohibition of the use of neck control holds by officers except in life-threatening situations will have an obvious adverse impact upon public and police officer safety. While such control holds are not failsafe, these Amici strongly believe that no alternative techniques exist which are as effective and safe for LAPD officers to use in subduing combative or fleeing suspects. Instead, officers will be compelled to resort to higher force techniques, such as employment of guns, batons, or karate kicks. Those officers who lack proficiency in karate kicks, or whose assignments prohibit the carrying of batons, will be limited to use of

their guns. Where officers resort to higher force, the likelihood of serious injury to combative suspects will be significantly increased. Alternatively, where officers hesitate to employ higher force techniques for fear of injuring combative suspects, these officers will face increased risk of personal injury.

The District Court's failure to consider the relative undesirability of these alternate control techniques underscores the ill-conceived nature of the injunctive relief in question. In the line of duty, police officers are called upon to make innumerable split-second decisions, in widely-varied contexts. Based upon careful analysis of the demands placed upon its officers in protecting the Los Angeles community, the LAPD has determined that control

holds are an effective and essential tactic for its police officers to use in performing their difficult jobs. In the absence of acceptable alternatives to the use of control holds, one needs little foresight to predict that this prohibition on the use of control holds will have a significant adverse impact upon the safety of police officers, combative suspects, and the general public.

Addressing the second concern, the broad injunctive relief sanctioned by the Court of Appeals constitutes an unwarranted judicial intrusion into local police administration. Under the terms of the District Court Order (1) the City is forced to comply with certain record-keeping and reporting standards, and (2) if the City wishes to

end the injunction against the use of control holds, it must institute an alternate training program that meets District Court approval. Despite the Court of Appeals' assertion in **Lyons II** that these requirements constitute a "relatively innocuous interference by the judiciary with police practice," these Amici respectfully submit that the sweeping structural changes in police procedure required by the injunction are prohibited by the strong principles of federalism and federal judicial restraint.

These Amici ardently believe that, if allowed to stand, the Court of Appeals' decisions will signal that federal courts are free to regulate the operation of local police functions on a wholesale basis. The foreseeable consequences will cripple the ability of

local police departments to respond to the individual needs of their communities.

## SUMMARY OF ARGUMENT

This brief demonstrates that the decisions below are in direct conflict with recent decisions of this Court. **Lyons I** contravenes this Court's rulings on standing, as articulated in **Valley Forge, O'Shea,** and **Rizzo.** **Lyons II** conflicts with this Court's decisions on federalism and federal judicial restraint, as announced in **Younger, O'Shea,** and **Rizzo.**

Unless this Court reverses the erroneous judgment of the Court of Appeals in **Lyons I** and **Lyons II,** these Amici believe that a severe blow will be dealt to the separate and independent

existence of state and municipal government.

## ARGUMENT

### I.

### THE COURT OF APPEALS' RULING IN LYONS I CONTRAVENES THIS COURT'S PREVIOUS DECISIONS ON "STANDING."

The Respondent lacks proper standing to seek the injunctive relief in question because (1) the possibility of future injury to Lyons from police officer use of control holds is too speculative and abstract to satisfy the "case or controversy" requirements of Article III, and (2) he has an adequate remedy at law for any alleged past injury that he has suffered.

On the first point, it is well-established that the "judicial power" of the United States is limited under

Article III of the Constitution to the resolution of "cases" and "controversies." See Valley Forge, etc., v. Americans United, etc., ___ U.S. ___, 102 S.Ct. 752, 757, 70 L.Ed.2d 700 (1982). As recently stated by this Court, Article III requires "at an irreducible minimum" that a plaintiff invoking federal court jurisdiction "show that he personally has suffered some actual or threatened injury" which is fairly traceable to the challenged conduct of the defendant, 1/ and that the plaintiff's injury is "likely to be redressed by a favorable decision." 2/

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1/ 102 S.Ct. 752, quoting Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 99 (1979).

2/ 102 S.Ct. 752, quoting Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 38, 41 (1976).

Id. at 758 (emphasis added). This Court has consistently held that a plaintiff's reliance upon an abstract "statistical" threat of future injury does not fulfill the "irreducible minimum" requirements of Article III. **O'Shea v. Littleton**, 414 U.S. 488, 497, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974); **Rizzo v. Goode**, 423 U.S. 362, 372, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976).

Beyond these constitutional requirements, the federal judiciary has placed certain prudential limitations upon its own jurisdiction. **Valley Forge, etc., v. Americans United, etc.**, 102 S.Ct. at 759. One such limitation is that the federal judiciary refrain "from adjudicating 'abstract questions of wide public significance' which amount to 'generalized grievances, pervasively

shared and most appropriately addressed in the representative branches.'" Id. at 760, quoting Warth v. Seldin, 422 U.S. 490, 499-500 (1975).

In the present case, it is undisputed that the threat of future injury to the Respondent from police use of control holds is the same abstract threat that everyone in Los Angeles faces. In its findings, the District Court did not refer to the existence of any greater threat of future injury to the Respondent than shared by the general populace of Los Angeles. While the evidence indicates that Lyons subjectively fears that he may be subjected to control holds in any hypothetical future contact with LAPD officers, this Court has repeatedly stated that "psychological consequence" or "emotional involvement"

arising out of past exposure to the challenged conduct does not itself show a present case or controversy regarding injunctive relief. **Valley Forge, etc., v. Americans United, etc.**, 102 S.Ct. at 765; **Ashcroft v. Matthis**, 431 U.S. 171, 173, 97 S.Ct. 1739, 52 L.Ed.2d 219 (1977). Since Lyons' fear of future injury is therefore highly speculative and amounts at most to a generalized grievance, the Respondent lacks standing to seek the injunctive relief in question.

The case law relied upon by the Court of Appeals to support its ruling in **Lyons I** is clearly inapposite. See **Hague v. CIO**, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423 (1939); **Allee v. Medrano**, 416 U.S. 802, 94 S.Ct. 2191, 40 L.Ed.2d 566 (1974). Unlike the factual

circumstances in **Hague** and **Allee**, a "pervasive pattern" of unconstitutional governmental action against a discrete and insular group simply does not exist in the present case. While the Court of Appeals blithely contends in **Lyons I** that this case falls within the ambit of **Hague** and **Allee** because the LAPD routinely applies control holds upon minor traffic violators, (**Lyons I**, 615 F.2d at 1247-1248), this contention is not even remotely supported by the District Court findings nor is it alleged in the complaint on file.

Addressing the second issue, the Court of Appeals in **Lyons I** ruled that Lyons had standing to seek injunctive relief even if a "future recurring controversy [would] have but a small chance of affecting the original

plaintiff," because his claim of past injury was one that was "capable of repetition, yet evading review." **Lyons** I, 615 F.2d at 1249. However, as this Court explained in **Weinstein v. Bradford**, 423 U.S. 147, 149, 96 S.Ct. 347, 46 L.Ed.2d 350 (1975), the "capable of repetition, yet evading review" exception to the mootness doctrine can only be invoked where two elements are established:

> "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." 3/

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3/ Although the **Weinstein** test does not apply to class actions, the present case is not a class action. While the Respondent sought class certification following issuance of the preliminary (continued)

In the present case, respondent fails to satisfy the **Weinstein** test. While it is true that the alleged application of the control hold upon Lyons was of too short a duration to be enjoined prior to its cessation, the Respondent possesses an adequate remedy at law to "fully litigate" whatever claims he may have arising out of the past use of control holds by LAPD officers. Under Title 42 U.S.C. §1983, citizens are authorized to bring damage suits against public entities and employees who violate their constitutional rights. See **Monell v. New York City Department of Public**

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3/ (continued) injunction, the District Court has stayed the motion. Absent class identification and certification, the Respondent is precluded from representing the interests of others. **Baxter v. Palmigiano**, 425 U.S. 308, fn.1, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976).

**Social Services**, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); **Owen v. City of Independence**, 445 U.S. 622, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980). In similar fashion, California law permits aggrieved individuals to bring damage suits against police departments and officers for use of excessive force. **Scruggs v. Haynes**, 252 Cal.App.2d 256, 264, 267-268 (1967).

In regards to the second element, the record simply does not support the conclusion that there is a "reasonable expectation" that Lyons will be subjected to control holds by LAPD officers in the future. As discussed above, the likelihood of Lyons being subjected to control holds in any hypothetical future

contact with the LAPD is highly speculative and no greater than that shared by the general populace of Los Angeles.

On the basis of the foregoing, these Amici therefore submit that Lyons does not have standing to sue for the injunctive relief in question.

## II.

### THE COURT OF APPEALS' RULING IN LYONS II REPRESENTS AN UNWARRANTED EXTENSION OF FEDERAL COURT SUPERVISORY POWER.

The preliminary injunction approved by the Court of Appeals in **Lyons II** calls for a major supervisory intrusion by the federal District Court into the daily workings of the Los Angeles Police Department. However, under the principles of federalism and federal judicial restraint, this Court has historically

refused to permit such judicial intrusion into state and local government functions, absent "extraordinary circumstances." **Rizzo v. Goode**, 423 U.S. at 379. In the seminal **Younger v. Harris** decision, this Court explained:

> "[R]ecognition of the need for a proper balance in the concurrent operation of federal and state courts counsels restraint against the issuance of injunctions against state officers engaged in the administration of the State's criminal laws in the absence of a showing of irreparable injury which is 'both great and immediate'. (**Younger v. Harris**, 401 U.S. 37, 46 [27 L.Ed.2d 669, 91 S.Ct. 746] (1971).)"

While this Court has been especially protective where federal judicial regulation involves state judicial proceedings, this Court has made it clear that the principles of federalism and federal judicial restraint apply where, as in this case, federal courts

seek to intrude into local law enforcement concerns:

> "[P]rinciples of federalism . . . though initially expounded . . . in cases where it was sought to enjoin a criminal prosecution . . . likewise have applicability where injunctive relief is sought, not against the judicial branch of the state government, but against those in charge of an executive branch of an agency of state or local governments . . . .." **Rizzo v. Goode**, 423 U.S. at 380.

In the present case, the District Court's injunctive order constitutes a major intrusion into the internal affairs of the LAPD. This intrusion cannot be justified on the basis that "extraordinary circumstances" exist that involve great and immediate risk of irreparable injury. The fact that most major police departments in the country employ these control holds signific

that LAPD's usage is not an "extraordinary circumstance." And even assuming that the application of control holds was a factor in the fatalities alleged by the Respondent, this yields such a low statistical incidence of fatality that it cannot be fairly said that the holds present a great risk of irreparable injury.

Instead, the record before the Court establishes that the City and the police department in question have undertaken a thoughtful and exhaustive study of the subject matter before authorizing officer use of control holds. The City has solicited the opinions of medical experts and martial arts experts. It has reviewed the practices of other law enforcement agencies, and it has modified its own policies and training

practices accordingly. If this Court allows the District Court's injunctive order to stand, then the City and municipalities across the nation will have little incentive to study and implement law enforcement procedures for fear that the federal judiciary will only substitute its own judgment.

Absent wanton conduct, local governments and police agencies must remain free to exercise their discretion and administer their programs as best suited to local needs. If the concept of federalism is to retain any meaning, then this Court must reverse the decisions below.

## CONCLUSION

For the foregoing reasons, these Amici respectfully submit that the

decisions rendered by the United States Court of Appeals for the Ninth Circuit should be reversed.

Respectfully submitted,

COTKIN, COLLINS, KOLTS
& FRANSCELL

BY: GEORGE J. FRANSCELL
Attorneys for Amici Curiae

# Amicus Brief

3

Supreme Court, U.S.
FILED
APR 22 1982
ALEXANDER L. STEVAS
CLERK

No. 81-1064

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

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THE CITY OF LOS ANGELES,
*Petitioner,*

v.

ADOLPH LYONS,
*Respondent.*

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**On Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit**

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## JOINT AMICUS CURIAE BRIEF OF THE NATIONAL ASSOCIATION OF CHIEFS OF POLICE AND THE AMERICAN LAW ENFORCEMENT OFFICERS ASSOCIATION IN SUPPORT OF PETITIONER

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## TABLE OF CONTENTS


| | Page |
|---|---|
| INTEREST OF THE AMICI CURIAE | 1 |
| STATEMENT OF THE CASE | 2 |
| SUMMARY OF ARGUMENT | 2 |
| ARGUMENT | 3 |
| I. This Case Does Not Present A Case Or Controversy Warranting Judicial Action; Respondent Lyons Does Not Have Standing To Secure the Injunctive Relief Sought | 3 |
| II. The *Lyons II* Injunction Transgresses Concepts of Federalism And In Any Event Is Burdensome And Likely To Be Counterproductive | 4 |
| CONCLUSION | 7 |


## TABLE OF AUTHORITIES

*Cases*:


| | |
|---|---|
| Baker v. Carr, 369 U.S. 186 (1962) | 3 |
| Lyons v. City of Los Angeles (Lyons I), 615 F.2d 1243 (9th Cir. 1980), *cert. denied*, 449 U.S. 934 (1980) | 3 |
| Lyons v. City of Los Angeles (Lyons II), 656 F.2d 417 (9th Cir. 1981), *cert. granted*, —— U.S. ——, 50 U.S.L.W. 3648 (February 22, 1982) | 4 |
| O'Shea v. Littleton, 414 U.S. 488 (1974) | 3 |
| Rizzo v. Goode, 423 U.S. 362 (1976) | 3, 4, 5 |


*Statute*:


| | |
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| 42 U.S.C. § 1983 | 5 |

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

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No. 81-1064

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THE CITY OF LOS ANGELES,
*Petitioner,*
v.
ADOLPH LYONS,
*Respondent.*

**On Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit**

---

## JOINT AMICUS CURIAE BRIEF OF THE NATIONAL ASSOCIATION OF CHIEFS OF POLICE AND THE AMERICAN LAW ENFORCEMENT OFFICERS ASSOCIATION IN SUPPORT OF PETITIONER

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### INTEREST OF THE AMICI CURIAE

This brief *amicus curiae* is filed in support of Petitioner City of Los Angeles on behalf of the National Association of Chiefs of Police and the American Law Enforcement Officers Association.

Both the National Association of Chiefs of Police ("NACOP") and the American Law Enforcement Officers Association ("ALEOA") are nonprofit membership organizations dedicated to the advancement of law enforcement efforts in the United States. NACOP's membership is open to command level law enforcement officials from the rank of sergeant up to chief or sheriff. ALEOA's membership is open to rank and file police officers. NACOP currently has approximately 5,000 members and ALEOA approximately 20,000.

Both organizations provide the following services to their membership: (1) a death benefits plan to provide

the family of any member with financial aid in the event of that member's accidental injury or death in the line of duty; (2) publications in the area of law enforcement; (3) training; and (4) legislative liaison services.

The officials and members of both associations strongly believe that the resolution of this case will have a significant impact upon the daily operations of both chiefs of police and the officers they supervise. The Ninth Circuit decision in this case, if permitted to stand, gravely implicates established concepts of federalism. These *amici curiae* welcome the opportunity to express their views before this Court and urge reversal of the Ninth Circuit decision. Accordingly, pursuant to Rule 36 of the Rules of the Court and with the consent of all parties,[1] NACOP and ALEOA respectfully file this Amicus Curiae Brief in support of Petitioner The City of Los Angeles.

## STATEMENT OF THE CASE

The statement of the case as set forth in Petitioner's Brief to be filed this date is adopted by the National Association of Chiefs of Police and the American Law Enforcement Officers Association for purposes of this brief *amicus curiae*.

## SUMMARY OF ARGUMENT

Respondent Adolph Lyons is without standing to secure, and there is no case or controversy to warrant, the broad injunctive relief entered by the district court.

In addition, local law enforcement is a governmental function which, for reasons of federalism and sound democratic principles, is properly commited to local governmental officials. Supervision of this function by the federal judiciary would compromise these principles. The specific injunction ordered by the district court would in any event be unwieldy and burdensome, and might well *increase* the risk of physical danger in the apprehension of criminal suspects or the restraint of detainees.

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[1] Letters of consent are filed with the Clerk.

## ARGUMENT

### I. This Case Does Not Present A Case Or Controversy Warranting Judicial Action; Respondent Lyons Does Not Have Standing To Secure the Injunctive Relief Sought.

The soul grounds asserted for the sweeping injunction of the district court is that Respondent "justifiably fears that any contact he has with Los Angeles police officers may result in his being choked or strangled to death without provocation, justification or legal excuse", Complaint 8:25-9:4 (CR 1), and that Respondent becomes "extremely apprehensive and nervous" whenever he sees a Los Angeles Police Department ("LAPD") police car. See deposition of the Respondent, June 9, 1977, 60:23-61:2 (EX 1).[2]

The initial requisite to be met by Respondent in this case is that there exist a "case" or "controversy" within the meaning of Article 3, Section 2, cl. 1 of the Constitution of the United States. The grounds put forth by Respondent, based as they are on conjecture and speculation, utterly fail to satisfy this requirement.

Indeed, this Court has already voiced its concerns as to the "case or controversy" requirements in this matter:

> *O'Shea* and *Rizzo* made clear that the federal courts are not the forum in which dissatisfied citizens may air their disagreements with government policy . . . unless they demonstrate a 'personal stake in the outcome.' *Baker v. Carr*, 369 U.S. 186, 204 (1962). . . .

*Lyons v. City of Los Angeles* (*Lyons I*), 615 F.2d 1243 (9th Cir. 1980), *cert. denied*, 449 U.S. 934 (1980) (Justices White, Powell and Rehnquist, dissenting).

In *O'Shea*, this Court properly held the case-or-controversy requirement was not satisfied when the plain-

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[2] As the Joint Appendix had not yet been prepared by the parties when this *amicus* brief was drafted, all citations herein employ the format used in the City of Los Angeles' Petition for a Writ of Certiorari, filed December 8, 1981.

tiff challenged allegedly discriminatory criminal justice procedures which would be triggered only if plaintiffs violated certain laws and then only if they were charged, held to answer, and tried. 414 U.S. at 497. And yet, plaintiff in *O'Shea* had alleged neither an intention to violate said laws nor an expectation or threat of prosecution.

Even less of a case or controversy was made out in *Rizzo v. Goode*, 423 U.S. 362 (1976), a challenge to the disciplinary system of a municipal police department which was likewise rejected by this Court.

Similarly, in this case, Respondent's proof of a case or controversy falls short. The evidence is uncontroverted that LAPD's policy is to require its officers to use only that force which is "reasonable and necessary" and the "minimal force" required to overcome resistance. Pet., p. 6. The LAPD "escalation-de-escalation" methodology outlining methods of control prescribes that "control holds" be employed only after "verbal command", "firm grip" and "pain compliance holds" have failed. Pet., p. 6-7. The prospect that Respondent (1) will be detained for a traffic violation, (2) will forcibly resist officers' intervention to such a degree so as to require the application of control holds, and (3) will be injured as a result, are speculative, remote and indeed largely within the control of Respondent himself.[3]

## II. The *Lyons II* Injunction Transgresses Concepts Of Federalism And In Any Event Is Burdensome And Likely to Be Counterproductive.

The injunction issued by the district court in *Lyons v. City of Los Angeles* (*Lyons II*), 656 F.2d 417 (9th Cir. 1981), *cert. granted*, —— U.S. ——, 50 U.S.L.W. 3648

[3] *Amici* adopt and incorporate herein by reference Petitioner City of Los Angeles' related argument that in addition to failing to establish a case or controversy, Respondent represents only himself and therefore has no standing to represent a larger class of all traffic detainees. (See Pet., pp. 18-20.)

(February 22, 1982), constitutes an unprecedented and unwarranted extension of the judicial branch into the domain of local law enforcement. Heretofore, this Court has declined to permit such intrusions absent "extraordinary circumstances". *Rizzo v. Goode*, *supra* at 379. The *Lyons II* injunction should be struck down on the grounds that such circumstances simply do not exist.

In *Rizzo*, class actions were instituted under the Civil Rights Act of 1871 (42 U.S.C. § 1983) against Philadelphia's Mayor, City Manager and various supervisory police officials. Plaintiffs sought an injunction against allegedly systematic, unconstitutional police mistreatment of minority citizens in particular and of all city residents in general. Expressly rejecting the district court's finding that a federal court's legal power to "supervise the functioning of the police department . . . is firmly established," this Court spoke forcefully to the necessity for judicial restraint in such matters:

> [T]he principles of federalism which play such an important part in governing the relationship between federal courts and state governments, though initially expounded and perhaps entitled to their greatest weight in cases where it was sought to enjoin a criminal prosecution in progress, have not been limited either to that situation or indeed to a criminal proceeding itself. We think these principles likewise have applicability where injunctive relief is sought, not against the judicial branch of the state government, but against those in charge of an executive agency or an agency of state or local governments such as respondents here.

423 U.S. at 380.

The intrusion here is not only the court's prohibition against the use of control holds except when threatened with "death or serious bodily harm." Pet., App. D, p. 21a. In addition, the district court's order further provides

that (a) the preliminary injunction shall remain in effect until the court has approved a new training program, and (b) reporting procedures be instituted such that the court has access to LAPD records "upon 24 hours notice." *Id.*, pp. 21a-22a. Both of these provisions interject the federal judiciary into the day-to-day operations of a municipal police department—which would be unduly burdensome to LAPD, wholly unwarranted given the isolated nature of control hold abuses and also impractical given the district court's relative inexperience in such matters.

Finally, it is incredible that the *Lyons II* Court of Appeals finds the injunction to be "relatively innocuous." 656 F.2d at 418. The district court will naturally serve in a continuing, supervisory role in reviewing allegations that the injunction has been violated in that the holds have been employed in prohibited situations. In addition, while presumably allegations of police abuse would normally be processed (at least initially) through internal LAPD administrative procedures, with the *Lyons II* injunction in place, allegations of control hold abuse (both fanciful and real) would presumably be heard immediately by the district court as part of a contempt proceeding. The threat of being haled into Federal Court to answer to unexamined, unscreened allegations of contempt will assuredly have a chilling affect on the proper use of the holds.

Respondent goes to great lengths to demonstrate the gruesome and hideous nature of "unnatural death by strangulation". Br. in Opp., pp. 10-13. Assuredly such death is hideous. *Amici* NACOP and ALEOA naturally abhor the reckless, unnecessary use of control holds which might result in such a tragedy. To argue that death by strangulation is gruesome is, however, to beg such questions as (a) the true extent of control hold abuse, (b) whether the *Lyons II* injunction, however well intentioned, will only result in greater risk of death and injury, and (c) whether aggrieved individuals already have sufficient remedies under traditional tort law concepts.

The state of the law and the record are in fact clear as to these questions. Control holds may and, except in isolated cases, have been applied safely and responsibly. Pet's. Reply Brief, p. 9. Further, Petitioner has amply demonstrated how the *Lyons II* injunction, by effectively eliminating control holds as a restraint method, will only result in *greater* risk of injury and death. That is, should pain compliance holds fail and control holds be prohibited, an arresting or detaining officer would have to release the subject thereby permitting flight and possibly necessitating higher levels of force such as the use of a baton or karate kicks. See Pet., pp. 20-23 and Pet's. Reply Brief, pp. 7-8.

To this, Respondent argues that injunctive relief is necessary because a money judgment alone could not possibly compensate someone for the loss of his life or that of a loved one. Br. in Opp., p. 21. Surely it is impossible to place a dollar value on a life—but this misses the point. At issue is what deterrence to control hold abuses already exists and whether it needs to be supplemented (or, indeed, might actually be *diminished*) by the intrusive injunction Respondent seeks here.

In short, in addition to establishing the "extraordinary circumstances," warranting the court's involvement in local law enforcement procedures, *Rizzo, supra*, it would also seem that Respondent must establish that this injunction will in fact further deter accidental death or injury. As stated, this has not in fact been proven and indeed it is likely that the injunction will only increase the risk of death or injury.

## CONCLUSION

Respondent is without standing to bring this action. If this Court determines however that standing and a sufficient "case" or "controversy" has been made out, established concepts of federalism require that it must

nonetheless reverse the Ninth Circuit Court of Appeals and strike down the injunction, leaving the use of control holds and other restraint techniques to the experienced, good faith administration of local law enforcement officials.

Respectfully submitted,

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April 22, 1982

# Docket Sheet

| NO. 81-1064-CFX | TITLE City of Los Angeles, Petitioner<br>v.<br>Adolph Lyons |
|---|---|

| DOCKETED | COURT |
|---|---|
| Dec. 8, 1981 | United States Court of Appeals for the Ninth Circuit |

| DATE | PROCEEDINGS AND ORDERS |
|---|---|
| | Counsel for Petitioner: Frederick N. Merkin |
| | Counsel for Respondent: Michael R. Mitchell, Fred Okrand, |
| Sept. 17, 1981 | Application for atay filed, and order temporarily granting same by Rehnquist, J, Sept. 17, 1981. |
| Sept. 18, 1981 | Opposition to above application filed. |
| Sept. 29, 1981 | Granted by Rehnquist with memorandum opinion. |
| Dec. 8, 1981 | Petition for writ of certiorari filed. (Record filed). |
| Dec. 9, 1981 | Brief, amici curiae, of The Los Angeles Police Protective League, et al. filed in support of petitioner. |
| Dec. 10, 1981 | Brief, amici curiae, of The City of San Jose, California, et al. in support of petitioner filed. |
| Jan. 6, 1982 | Brief, amicus curiae, of The National Institute of Municipal Law Officers in support of petitioner filed. |
| Jan. 8, 1982 | Brief for the respondent in opposition filed. |
| Jan. 13, 1982 | DISTRIBUTED. 2-19. |
| Jan. 18, 1982 | Reply brief for the petitioner filed. (D). |
| Feb. 22, 1982 | Petition GRANTED. |
| | --- |
| Mar. 30, 1982 | Order extending time to file the joint appendix and petitioner's brief on the merits until Apr. 22, 1982. |
| Apr. 22, 1982 | Brief, amicus curiae, of the City of San Jose, California, and other joining cities of California in support of petition filed. |
| Apr. 22, 1982 | Brief, amici curiae, of The Los Angeles Police Protective League, et al. in support of petition filed. |
| Apr. 22, 1982 | Joint Brief, amicus curiae, of The National Association of Chiefs of Police and The American Law Enforcement Officers Association in support of petition filed. |
| Apr. 26, 1982 | Joint appendix filed. |
| Apr. 26, 1982 | Brief for the petitioner filed. |
| May 14, 1982 | Order extending time to file the respondent's brief on the merits until June 21, 1982. |
| June 3, 1982 | Memorandum of petitioner suggesting a question of mootness and addressing related issues filed. |
| June 1, 1982 | Motion of respondent to dismiss writ of certiorari as improvidently granted filed. |
| | (Over) |

81-1064

*Title*

No.

| DATE | PROCEEDINGS AND ORDERS |
|---|---|
| June 5, 1982 | Opposition by petitioner to motion of respondent to dismiss writ of certiorari as improvidently granted filed. |
| June 7, 1982 | DISTRIBUTED. 6-10. (Motion of respondent to dismiss writ and Memorandum of petitioner suggesting a question of mootness). |
| June 14, 1982 | The motion of respondent to dismiss writ of certiorari as improvidently granted is DENIED. Further consideration of the memorandum of petitioner suggesting a question of mootness and addressing related issues is deferred to the hearing of the case on the merits. |
| June 11, 1982 | Order further extending time to file the respondent's brief on the merits until July 6, 1982. |
| June 28, 1982 | Order further extending time to file the respondent's brief on the merits until July 20, 1982. |
| July 27, 1982 | Brief for the respondent filed. |
| Sept. 3, 1982 | CIRCULATED. |
| Sept. 20, 1982 | Reply brief for the petitioner filed. (D). |
| Oct. 27, 1982 | Supplemental brief concerning recent factual and legal developments filed. (D). |
| Nov. 2, 1982 | ARGUED. |